

**EXHIBITS A-E OF DECLARATION OF NEIL J. OXFORD
IN SUPPORT OF THE MEMORANDUM OF
MOVANTS IN OPPOSITION TO THE MOTION IN LIMINE OF BARCLAYS
CAPITAL INC. FOR AN ORDER EXCLUDING THE EXPERT TESTIMONY OF
DANIEL MCISAAC REGARDING LBI'S OBLIGATIONS UNDER SEC RULES 15c3-1,
15c3-3 AND/OR THE SECURITIES INVESTOR PROTECTION ACT**

EXHIBIT A

1
2 UNITED STATES BANKRUPTCY COURT
3 SOUTHERN DISTRICT OF NEW YORK
4

5 In re:)
6 LEHMAN BROTHERS) Chapter 11
7 HOLDINGS, INC., et al.,) Case No. 08-13555(JMP)
8 Debtors.)
-----)
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11
12
13

14 HIGHLY CONFIDENTIAL DEPOSITION OF
15 ALASTAIR BLACKWELL
16 New York, New York
17 Friday, August 7, 2009
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19
20
21
22

23 Reported by:
24 KRISTIN KOCH, RPR, RMR, CRR, CLR
25 JOB NO. 24037

August 7, 2009
9:21 a.m.

Deposition of ALASTAIR BLACKWELL,
held at the offices of JONES DAY, LLP, 222
East 41st Street, New York, New York,
before Kristin Koch, a Registered
Professional Reporter, Registered Merit
Reporter, Certified Realtime Reporter,
Certified Livenote Reporter and Notary
Public of the State of New York.

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IT IS HEREBY STIPULATED AND AGREED
by and between the attorneys for the
respective parties herein, that filing and
sealing be and the same are hereby waived.

IT IS FURTHER STIPULATED AND AGREED
that all objections, except as to the form
of the question, shall be reserved to the
time of the trial.

IT IS FURTHER STIPULATED AND AGREED
that the within deposition may be sworn to
and signed before any officer authorized
to administer an oath, with the same
force and effect as if signed and sworn
to before the Court.

- oOo -

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1
2 ALASTAIR BLACKWELL,
3 called as a witness, having been duly sworn
4 by a Notary Public, was examined and
5 testified as follows:

6 EXAMINATION BY

7 MR. HINE:

8 Q. Good morning, Mr. Blackwell.

9 A. Good morning.

10 Q. How are you?

11 A. Very good, thanks.

12 Q. I am sure your counsel has told you
13 what's going on here today, but we are here
14 taking a deposition involving the Lehman
15 bankruptcy proceedings.

16 My name is Bill Hine and I am from
17 Jones Day, which is the firm that's special
18 counsel to LBHI. Several of the other counsel
19 along the table will introduce themselves
20 later, but they represent various entities that
21 are involved in this proceeding.

22 So the way this is going to work is
23 I am going to ask you a bunch of questions
24 first and they will all take turns with you
25 later as we progress.

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2 A. Understood.

3 Q. As we go, I am going to be asking
4 you a series of questions. You are under oath,
5 so you will answer the questions. At some
6 points in time you will hear your counsel state
7 an objection. That doesn't mean you don't have
8 to answer the question. That just means he is
9 either preserving the record or he wants to ask
10 me to clarify the question. If he instructs
11 you not to answer, that's up to you as well,
12 but the mere fact that he makes an objection
13 doesn't mean you don't have to answer the
14 question.

15 In that vein, I'd like to ask you
16 just please ask me to clarify any question
17 where I might misuse an acronym or a word. I
18 feel like I am learning a new language here
19 reading all you folks' e-mail, so I know there
20 is technical financial words that you guys use
21 and you understand readily, but if you need me
22 to clarify one, I want to have a clear question
23 so you can answer it.

24 I think your counsel has probably
25 told you, but you have been designated as a

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2 30(b)(6) witness for a select set of issues in
3 this case and those issues relate to Schedules
4 A and B of the Clarification Letter. We will
5 get to that later, but I just want to let you
6 know that, and that I will alert you to that
7 fact when we get to that portion of the
8 deposition, so in that portion you will be
9 speaking on behalf of Barclays.

10 So I am ready to proceed if you are.
11 Are we ready to do this?

12 A. Absolutely, yes. Thank you.

13 Q. Can we start off with a little
14 background information about you.

15 You are currently employed by
16 Barclays Capital; correct?

17 A. I am, yes.

18 Q. And what is your present position?

19 A. I am responsible for the Americas
20 operations department for capital markets.

21 Q. Okay. And do you have a title?

22 A. I am a managing director.

23 Q. When did you start your employment
24 at Barclays?

25 A. I received a contract after

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2 bankruptcy, I don't know exactly when I signed
3 that, but it would have been, I think, two
4 weeks after bankruptcy that I signed a contract
5 to join Barclays. I wasn't one of those people
6 that received an e-mail and clicked off on it,
7 for instance.

8 Q. Okay. When did you -- that's the
9 contract, we will get to that in a second, but
10 when did you consider yourself a Barclays
11 employee?

12 A. Post bankruptcy.

13 Q. Was it upon the closing of the sale
14 transaction?

15 A. I would think so, yes.

16 Q. And just as we go forward, if I
17 refer to the sale transaction, can we agree
18 that that will be the transaction that closed
19 on the 22nd of September 2008 whereby certain
20 assets were transferred to Barclays? Can we
21 agree on that?

22 A. What time is that?

23 Q. I don't know the time.

24 A. Midnight from that day.

25 Q. Okay. So is it fair to say after

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that day you were a Barclays employee?

A. Yes.

Q. Can you just tell me, describe for me generally your duties and responsibilities in your present position.

A. There are approximately 900 staff in the Americas and the majority of which are in New York and New Jersey that provide support, and when I say "support," I mean that there is a function to help capture transactions, verify transactions and record them on the books and records of Barclays Capital, or the BCI entity predominantly, and to ensure the securities in cash, consideration is received on these transactions. My responsibility is to manage that across all of the asset classes that Barclays transacts in the region. That does not include the wealth business in the region. The wealth business is a client of BCI. We do provide a shared -- what we would describe as a shared service to provide operational support in the sense that I clear -- our organization clears transactions on behalf of the wealth business.

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MR. SHAW: Before you go on, I forgot to put this on the record at the beginning. Under the protective order I believe the way we were proceeding is we have been designating the entire deposition as highly confidential and then within seven days we re-designate more precisely based on the content.

MR. HINE: That's no problem.

Q. I think I understood what you just told me, but is that different in any way from the duties you had when you were with Lehman?

A. In breadth, yes. It's a narrower remit.

Q. Excuse me?

A. It's a narrower remit.

Q. "Remit" meaning?

A. My responsibilities were broader at Lehman.

Q. In what way?

A. I had global responsibility for operations, for capital markets, and I was also responsible for what was called the IMD division, so that's the investment management

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division, globally at Lehman Brothers.

Q. So is the difference in responsibility geographic?

A. Geographic and the fact that it also encompassed the investment management division.

Q. Okay.

A. And there are functional definitions -- every firm on Wall Street defines operations slightly differently in terms of content. So an example would be the treasury function sits in finance in the former Lehman organization, but sits in operations at Barclays Capital. So there are definitional components which would be different, but substantially very similar.

Q. Who do you report to at Barclays?

A. I report to Carol Machell.

Q. Can you spell that?

A. M-A-C-H-E-L-L.

Q. Anyone else?

A. That's my global report. She is based in London. And I report to Gerard LaRocco regionally, who is the regional CAO for the Americas.

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Q. Any other reports that you have?

A. No.

Q. And who reports to you in your present position?

A. Again, this is where the functional construct of Barclays is different to Lehman. In my regional role the people with primary responsibility for the products are actually the global heads of the product line, so there was a global head of rates, credit, prime brokerage, equities, et cetera, who have primary responsibility. People who report to me directly are Samantha Hoban, who is the COO for the region, and I have responsibility for tax, that's Lisa Ryer, and Alex Crepeau, who is responsible for regulatory reporting. I also have responsibility for the TSA effort within operations, which it had historically, but we no longer support the LBHI Alvarez Marsal clean-up effort of LBHI. That organization has transitioned in its entirety. That was managed by a gentleman called Greg Eickbush. He is now an employee of LBHI. I still have responsibility for the LBI TSA operations team,

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2 which is led by James Black and informally
3 managed by Alex Crepeau until about a week ago.

4 **Q. When you talk about operations**
5 **function, is there a component of that of your**
6 **work that covers valuing or marking assets?**

7 A. I want to be very precise about the
8 way I would describe that. There is a function
9 in operations that values positions, but that's
10 using data, pricing data, that is either
11 purchased from a third party or is consumed
12 from a front office trading source, so we are
13 not determining a valuation on a security. We
14 do not determine valuation.

15 **Q. But you mark the security with this**
16 **information that you receive from a third**
17 **source?**

18 A. It's a mechanical process.
19 Inventory, mark, it gives you a result. It's
20 not -- you are not applying any thought to it
21 other than is that actually the security that
22 our mark ties out to.

23 **Q. Could we go back now to your last**
24 **position you held at Lehman.**

25 **First of all, how long did you work**
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2 **for Lehman?**

3 A. I worked for Lehman from November
4 27th, 2000 until the 22nd of September, 2008.

5 **Q. And what was the last position you**
6 **held at Lehman?**

7 A. I was global head of operations for
8 both capital markets and IMD. I was in the
9 process of taking responsibility for Aurora
10 loan services, but I hadn't been formally
11 announced, so that was matter of a few weeks'
12 worth of effort, but I didn't have any formal
13 management responsibility at that point, so you
14 will see information in my e-mails associated
15 with Aurora.

16 **Q. And who did you report directly to**
17 **in that position?**

18 A. I reported to Ian Lowitt.

19 **Q. Anyone else?**

20 A. No.

21 **Q. And who were your direct reports?**

22 A. In the United States, Neal Ullman,
23 who is global head of our clearance and custody
24 function. Monty Forrest, who is global head of
25 prime services operations. Kirk Butryn who was
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2 co-head of equity operations. Alex Crepeau,
3 who was responsible for regulatory operations,
4 tax, operations control, client valuations and
5 margin. I believe that's all of them from
6 memory. In the U.K. there is a gentleman
7 called Garth Barker Goldie, who is responsible
8 for European operations, and in Asia,
9 Christopher Flanagan, who was responsible for
10 our Asian operations. And there was also --
11 actually, there is another gentleman called
12 Stewart Nineham who was my CAO in -- global
13 CAO.

14 **Q. Can you explain to me in your Lehman**
15 **role whether your group was responsible for**
16 **valuing or marking securities? Same question**
17 **only I am trying to see if the Lehman role was**
18 **the same.**

19 A. It was identical. In terms of
20 consumption of data, any model-driven pricing
21 would be front-end trading, trading
22 responsibility to provide a mark, and finance
23 function at Lehman Brothers, product control,
24 for want of a better term, was responsible for
25 price testing, so they would test the models to

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2 ensure that those were accurate and produce the
3 result that they were intended to do.

4 **Q. And who were in charge of those**
5 **functions at Lehman; do you recall?**

6 A. The front office was various
7 different business heads, so, I mean,
8 ultimately it would have been Bart as president
9 and head of risk effectively, but Gelband was
10 responsible for the fixed income division and
11 Jerry Donini was responsible for equities, and
12 the IMD business theoretically didn't take any
13 risk.

14 **Q. I don't mean to be intrusive, but I**
15 **have to ask you some questions about your**
16 **compensation.**

17 MR. SHAW: This is all highly
18 confidential.

19 MR. HINE: Yes.

20 **Q. When you transitioned from Lehman,**
21 **your position at Lehman to your position at**
22 **Barclays, did your compensation increase?**

23 A. No, actually, it declined.

24 **Q. Declined. In what way?**

25 A. I had a two-year guarantee from

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2 Lehman Brothers in 2007 and the first year of
3 that guarantee was -- for 2007 I think was
4 \$2.7 million. The second year was
5 \$3.5 million. My -- obviously the majority of
6 that comp gets paid in stock. At the point of
7 transition there was a process which you
8 probably see in my e-mail where I was offered a
9 certain role and I considered it over a period
10 of time and decided to do something slightly
11 different and at that point we agreed that I
12 would have a two-year contract because of
13 uncertainty about where the future would lead
14 and the compensation was tied to my 2007
15 number, so it was probably approximately
16 \$700,000 less. There were some additional
17 incentive payments for longevity at two points
18 in September of this year and September of
19 next, but I think the headline number was
20 probably less than overall what my Lehman
21 compensation would have been in 2008.

22 **Q. And what position were you**
23 **considered for that -- you alluded to a**
24 **suggestion of a position and you opted for**
25 **something else. Could you just explain to me**

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2 **what you meant by that?**

3 A. I had been global head at Lehman
4 for, I think, three or four months, a
5 relatively a short period of time. The role
6 that I was offered was running Americas
7 operations and being co-head of the equity
8 operations organization. In my mind that was
9 taking me back four or five years in my career
10 and I didn't really see the -- it didn't feel
11 appropriate, so I was a little unhappy that
12 that was what I was being offered and I
13 certainly wasn't -- yeah, I was -- it wasn't --
14 it didn't feel like the right thing for me at
15 that point, but I was very keen to help
16 everyone with the integration process. I felt
17 I had a moral obligation to my team to make
18 sure that happened, and though I was being
19 offered jobs externally for some period of
20 time, I felt I wanted to stay and see this
21 through and put faith in the organization to
22 find me a role in the future, which I am still
23 hoping will happen.

24 **Q. You said you were head of global for**
25 **only three months. What was your position**

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2 **prior to your position as head of global for**
3 **Lehman?**

4 A. I had global responsibility for
5 prime services operations. I also had global
6 responsibility for equity operations, and in
7 addition to that I was European head of
8 operations, so I commuted back and forth
9 between London and New York almost on a weekly
10 basis for about a year, little less than a
11 year.

12 **Q. Back to your compensation, can we**
13 **just break it into some components here just so**
14 **I understand it. I take it at Lehman you had a**
15 **base salary?**

16 A. Yes.

17 **Q. And what was that?**

18 A. I think it was \$200,000.

19 **Q. And then you had -- am I correct to**
20 **say you had a cash component bonus and an**
21 **equity component bonus?**

22 A. Yes, that's correct. Off the top of
23 my head I wouldn't be able to tell you. I
24 could go back and look at documents and confirm
25 it, but the number I recall would be

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2 \$2.5 million of bonus, of which somewhere
3 between 50 and -- I would imagine somewhere
4 around 50 percent would be cash, 50 percent
5 securities, deferred five-year equity.

6 **Q. And that was for 2007, you said?**

7 A. Correct.

8 **Q. Now, in 2008 your base salary was**
9 **still the same; correct?**

10 A. Correct.

11 **Q. Okay. And then you expected to make**
12 **3.2 in bonus, whether it's cash or equity?**

13 A. No, my base was 200. I was
14 expecting 3.5, so I was expecting 3.3.

15 **Q. You are right. I am bad at math.**

16 **When you went to Barclays, out of**
17 **that 3.3 did you receive any of it?**

18 A. No.

19 **Q. Did you receive any payment from**
20 **Barclays that was supposed to have compensated**
21 **you for your 2008 bonus?**

22 A. I received a bonus in February in
23 the normal compensation cycle, so yes, I
24 received a bonus payment, but I think it was to
25 compensate me for -- that it was to retain me

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as an employee of the organization and I was
performing an important role within the
organization.

**Q. Okay. So you didn't view it as
reimbursing you or compensating you for the
first nine months of the year that you have
spent at Lehman; is that right?**

A. No.

**Q. No, it's not right or -- I asked a
strange question.**

**Did you view it as compensating you
for your first nine months of work that you had
spent at Lehman in 2008?**

A. No.

MR. HINE: I want to show you a
document here which we are going to mark as
Exhibit 55 B.

(Exhibit 55 B, letter dated October
2, 2008, Bates stamped BCI-EX-00077291
through BCI-EX-00077293, marked for
identification.)

**Q. Mr. Blackwell, I have just handed
you a document marked as 55 B. I just wanted
to ask you if you have ever seen that document**

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before.**

A. Yes.

Q. What is that?

A. That is the contract that Carol
Machell handed me, offered me to become an
employee of Barclays Capital.

**Q. And is that your signature on the
last page?**

A. Yes.

**Q. You said you wanted to say something
in addition to supplement your prior testimony.**

A. Yes. I just wanted to mention that
in addition to my regular compensation in 2008,
Lehman Brothers awarded me a special stock
award, I think it was in July, of some deferred
stock issued at a discounted price, which would
vest in three years. There was no partial
vesting. It was full vesting in three years.
So I just wanted to put that on the record as
well.

**Q. And that is part of your Lehman
compensation for 2008?**

A. It was approximately --

MR. SHAW: Objection. Foundation.
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A. Sorry. Could you ask the question
again?

Q. Why did they give you this award?

MR. SHAW: Objection. Foundation.

MR. HINE: You can answer.

A. My understanding is that we were
obviously seeing a lot of employees leave the
firm at that point in time, there was a lot of
movement in the marketplace, people moving
around, and I think my understanding was it was
to show that I was a valued employee.

**Q. Okay. And what was the value of
this -- did you say it was an option?**

A. Deferred stock. I don't have the
document, I haven't looked at it for a very
long time, but it was approximately a million
dollars of deferred discounted Lehman
securities.

**Q. And did you consider that part of
your compensation for your work in 2008?**

A. I considered it as part of my
compensation in 2008, yes. I didn't consider
it in the headline number I gave you of
\$2.7 million. That was in addition.

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**Q. I understand. We will just look at
your contract here for a second. You have
testified about some of this. I just want to
make sure I understand it.**

Where it says "Compensation," the
heading Compensation, it mentions a base salary
of 200,000. That's what you testified earlier;
correct?

A. Correct.

**Q. So that's your base salary now at
Barclays?**

A. It is.

**Q. Then it talks about a 2008
guaranteed cash bonus. Do you see that line?**

A. I do.

**Q. And now is that -- have you been
paid that?**

A. I have.

**Q. And is that -- what is that for?
Why were you paid that?**

MR. SHAW: Objection. Foundation.

A. Compensation for my employment by
Barclays.

Q. Okay. So that's compensation for
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your employment by Barclays for the period that
you worked for them in 2008?

MR. SHAW: Objection. Foundation.

MR. HINE: You can answer.

A. I would think of these in the normal course of business when you transfer between companies, if I moved to Citibank, for instance, I would have expected to receive a guarantee or award to move in a half year, so when I think of this, this is for my period of employment with Barclays, but I think it's relatively standard practice that somebody at my level leaving between organizations, which is effectively what happened, would be compensated and I would think of that as my OA comp.

Q. Later on I see 2008 EPP Recommendation. Do you see that heading?

A. I do.

Q. Can you describe for me what this is?

A. I understand this to be deferred compensation, a stock award, to the value -- and I'm not sure what it was awarded at, I

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haven't paid any attention to it, but it's an award that will vest over a three-year period, so if I am an employee in three years from now at Barclays, then I will receive that -- I will receive that stock.

Q. Okay. Did you, in fact, receive this award on March 15th, 2009?

A. I received the award, but not on March 15th.

Q. When did you receive it?

A. I don't know the precise date, but it was late. It was later in the year.

Q. Okay. Do you have an approximate date you can give me?

A. No.

Q. Then I see something called 2009 guaranteed cash bonus. Do you see that?

A. I do.

Q. Now, is that the bonus that you previously described when you were talking about the bonus that you expect to receive from Barclays going forward?

A. This is the bonus I expect to receive for my work and performance in 2009.

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Q. And continuing down on the list we see 2009 EPP recommendation, which appears to be a stock award.

Is that what you expect to receive as a stock bonus for your work in 2009?

A. Yes.

Q. Now, continuing further down you see a special cash award which mentions the sum of \$1.225 million. Do you see that?

A. I do.

Q. What is that for?

A. I think this is --

MR. SHAW: Objection. Foundation.

A. I think this is an award, it's effectively a retention payment to encourage me to stay at the firm over that period of time, because, again, there have been alternatives along the way and I want to stay at Barclays, so I think that's what that payment is for.

Q. And you haven't received that yet?

A. No.

Q. But you expect to receive it on the anniversary of your employment?

A. Yes. 22nd of September I would

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expect to receive the first half of that payment.

Q. Can you tell me when you first began discussions with Barclays about your employment arrangement that you expected to have with them?

A. It was in the week immediately after -- immediately after LBI's filing after the 22nd. I don't think discussions began until later in that week. I think around the 24th or 25th, but I can't recall precisely.

Q. Okay. Can I just clarify some dates. I will represent LBHI filed on the 15th.

A. Absolutely.

Q. Correct? Okay. LBI filed on the 19th; correct?

A. Yes.

Q. Okay. And during that week did you have any discussions with Barclays about your potential employment there?

A. No.

Q. Did you have any discussions with anyone else?

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A. I was incredibly busy, incredibly busy. Friends and family were concerned and it's possible that I made reference to the fact that I would become a Barclays employee at some point, I assumed. I had an assumption. I had no knowledge that I would be and I had no discussions that were suggested I would be.

Q. And so did I understand you correctly to say that you didn't have such discussions until after the closing of the sale transaction?

A. Yes. It wasn't until, I think, the earliest the 24th. It was certainly into the -- post LBI's bankruptcy after the APA was signed.

Q. And who did you have those discussions with at Barclays?

A. Carol Machell. At Barclays, Carol Machell.

Q. Did you discuss it with Michael Evans at all?

A. Absolutely not.

Q. And Carol Machell is the person who ultimately became your supervisor?

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A. Absolutely.

Q. What do you recall about those discussions?

A. The financial component was of little interest to me, frankly. I was expecting that we would discuss a role and the discussion didn't go very well, because I wasn't very happy in terms of the role. The focus wasn't on the financial components. I have no dependents. I don't -- the money isn't the main motivator in why I go to work. I was looking for an interesting role in an organization which I thought would be an interesting place to be and the role that I was initially offered I thought was -- didn't meet my expectations and, therefore, I actually considered leaving. What we had discussed in that first set of conversations was that I would go away and think about it and, again, I wanted to be responsible and work with Carol to ensure there was a smooth integration, so that wouldn't mean I would leave immediately, but work for a period of time, certainly into the new year to help with a smooth transition of my

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staff.

Q. Was there any back-and-forth on the numbers?

A. Yes, because it was -- the original contract I was offered was more money than this.

Q. So could you just summarize what the back-and-forth was?

A. It was more about the duration, the value of the contract, the cash award or whatever -- I don't recall the numbers exactly, but it was more than this contract.

Q. When you say "the duration," you mean the length of your expected employment?

A. This contract effectively has several components, but I would look at it as a two-year contract, and the contract that I was offered was a one-year contract with two years of incentive payments. From memory. I may not be precise. But certainly the role was the core part of my focus.

Q. During the week of the 15th, in other words, after LBHI's filing leading up to eventually LBI's filing, did you have any

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understanding of the arrangements that had been made as to compensation for former Lehman employees?

A. No.

Q. Did you have any knowledge of the provisions in the APA that related to compensation?

A. No.

Q. Did you have any role in negotiating those types of provisions?

A. No. I was asked to make lists of people who were critical to certain things, but that was it.

Q. Did you hear any rumors about how former Lehman employees were going to be compensated when they moved to Barclays?

A. Can you be precise about the time frame you are talking about?

Q. I am talking about the week of -- let's talk about the week of September 15th. In other words, LBHI has filed, LBI has not yet filed, but that five-day period.

A. All I had heard was speculation in the press, and from my recollection I can't

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2 determine exactly -- again, that period of time
3 is a strange period, but I'm sure my e-mail
4 would highlight anything that I knew at the
5 time. My understanding, there was press
6 speculation which was rife amongst the staff,
7 so they were talking about it, and my concern
8 was to calm people, because a lot of people at
9 Lehman were just leaving the building, so,
10 again, just trying to hear what they were
11 seeing and reading so I could respond in a way.
12 If I didn't know anything, I would tell them I
13 didn't know anything, it wasn't necessarily
14 true. So it wasn't information I was receiving
15 from people negotiating the deal or from my
16 superiors.

17 **Q. Am I correct to say that you had no**
18 **specific knowledge of how these folks would be**
19 **compensated?**

20 A. None whatsoever.

21 **Q. And so you did not communicate to**
22 **your subordinates the compensation arrangements**
23 **that they could be expecting?**

24 A. Expecting, no.

25 **Q. No, you did not?**

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2 A. I didn't.

3 **Q. All right. So let's -- I'd like to**
4 **turn to that -- that week is of great interest**
5 **to us lawyers here, so can we just talk**
6 **generally about your role during that week and**
7 **maybe the couple of days prior to that.**

8 A. So just to clarify, this is the 15th
9 through to the 22nd?

10 **Q. Correct. Let's just start prior to**
11 **the 15th.**

12 **You are aware that Barclays and**
13 **Lehman had some discussions prior to the filing**
14 **of bankruptcy about a possible transaction?**

15 A. Yes.

16 **Q. Were you involved in any of those**
17 **discussions at all?**

18 A. No. I was asked by Ian to come to a
19 meeting on the -- I don't know what day it was.
20 It was in the week pre -- sorry, it was pre
21 LBHI's bankruptcy, in the week prior to that,
22 and I was in a -- I joined a meeting for about
23 half an hour. It had been going on for a long
24 time. I don't really have any recollection as
25 to what was actually even being discussed,

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2 frankly, and Ian actually asked me to come over
3 and talk about some business-related issue, so
4 it was not in terms of any negotiation,
5 understanding what content there was. There
6 were lots of Barclays people, lots of lawyers
7 and lots of bankers on the floor, but I had no
8 documentation, no exposure to anything that was
9 relevant to that.

10 **Q. And where was this meeting?**

11 A. I believe it was on the 32nd floor
12 of 745.

13 **Q. Do you know the date?**

14 A. No, I don't.

15 **Q. Do you have any recollection of what**
16 **was being discussed?**

17 A. In the room, absolutely none, and I
18 think -- Ian, I think, just wanted to make sure
19 I was okay. That was probably the --

20 **Q. Ian being?**

21 A. Ian Lowitt. Just wanted to make
22 sure I was okay. That's why he had asked me to
23 come over really and talk about some
24 business-related thing.

25 **Q. Did you have any role in the**

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2 **preparation or the filing of bankruptcy by**
3 **LBHI?**

4 A. Absolutely not.

5 **Q. Did you know about it before it**
6 **happened?**

7 A. Yes. I think I knew about it before
8 it was going to happen because I was asked to
9 go and see Ian in the board room and,
10 coincidentally, I don't know how many times
11 this happened over the course of that day, but
12 whilst I was in the board room, and that was in
13 the evening of the -- I'm not sure what day it
14 was, but I think it was pre the filing, Dick
15 Fuld walked in and said that we would be
16 filing. At the time I had no understanding
17 what that meant, was that LBI, LBHI, it wasn't
18 clear, but it was clear that some bankruptcy
19 proceeding was going to be -- and there were
20 Weil lawyers in the room at the time, so what I
21 was asked -- Ian asked me to -- I was being
22 asked to carry out a certain set of functions
23 and that's why I was in attendance for a very
24 brief period of time, left and went to carry
25 out that instruction or instructions.

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2 **Q. Was that instruction related to the**
3 **bankruptcy?**

4 A. No, it wasn't related to the
5 bankruptcy. It was related to LBI's
6 functioning, ongoing functioning.

7 **Q. Did you have any discussion -- when**
8 **you say "LBI's functioning," is that -- are you**
9 **talking about the fact that LBI did not file**
10 **for bankruptcy until several days later?**

11 A. Correct.

12 **Q. Okay. So what were you doing to**
13 **assure LBI's functioning?**

14 A. Ian asked me to do two things. Be
15 able to be -- be able to function -- have LBI
16 function as an entity by itself from an
17 operational standpoint, so -- and also work
18 with treasury to create a funding ladder for
19 the week, so based on the settlement activity
20 that would be taking place over the course of
21 that week, lay out a cash flow, and also put a
22 payment protocol in so that no payment, no cash
23 could leave LBI. So that was done. Myself and
24 Bridget O'Connor, who was the Lehman head of
25 technology, went away and worked with our

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2 **Q. So back to your role during that**
3 **week, now on the 15th you learned that LBHI has**
4 **filed for bankruptcy; correct?**

5 A. Is that -- what day of the week --

6 **Q. That's Monday.**

7 A. That's the Monday. I think it was
8 Sunday night.

9 **Q. So you heard about it Sunday night?**

10 A. I think so. It was the 14th. Late
11 Sunday night.

12 **Q. What did you hear -- apparently on**
13 **the 15th Barclays and Lehman start speaking**
14 **again and they eventually arrive at an APA.**

15 **Can you describe for me any role you**
16 **played in that process?**

17 A. I didn't know that Barclays -- I
18 wasn't involved in any of those discussions, so
19 I played no role.

20 **Q. Okay. So did the APA come as a**
21 **surprise to you when you heard that?**

22 A. I didn't know -- does the
23 agreement --

24 **Q. That was a bad question.**

25 **How did you first hear that there**

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2 respective teams and our teams then worked
3 together to execute that. We worked into, I
4 think, the early hours of the night to
5 determine what we thought the cash flows would
6 be. I provided that ladder, funding ladder, to
7 the treasury department, which is run by Paolo
8 Tonucci.

9 **Q. So you used a lot of words there. I**
10 **just want to see if I understand.**

11 **Is this the financing that was**
12 **provided by the Fed to LBI?**

13 A. No. This is -- the cash flows -- in
14 the securities business, exchange securities
15 for cash. In the exchange of securities for
16 cash, obviously some security is leaving, some
17 securities are coming into inventory. Some
18 client securities are coming in and leaving.
19 And the associated cash flows that went with
20 that was to understand what the net cash
21 position each day would be if the firm had
22 perfect settlement. And when I say "perfect
23 settlement," I mean all transactions, so all
24 securities and consideration settled on the
25 contractual settlement date.

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2 **was going to be a sale transaction between**
3 **Barclays and Lehman?**

4 A. I think on the Monday what I was
5 asked to do as another set of actions was work
6 towards a conversion and the way I would
7 interpret a conversion is that there is going
8 to be some -- either some asset sale or the
9 whole organization is going to be sold as a
10 going concern, the LBI organization would be
11 sold as a going concern. So I'm sure you can
12 see it in my e-mail as well, there was a series
13 of meetings to create a project plan, to
14 work -- which involved technology, finance,
15 operations, to have -- create a fully
16 functioning broker/dealer for whenever that was
17 going to be. So that was an incredibly onerous
18 piece of work. These things normally take
19 months and years to create and we were given a
20 very compressed time frame to try and do that,
21 so I was trying to get a business up and
22 running again potentially. That's the way I
23 interpreted that. Those were my marching
24 orders at that point. So I had no idea what
25 the content -- what sale meant.

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2 **Q. Did you have an understanding of the**
3 **terms of the Asset Purchase Agreement?**

4 A. I didn't know an Asset Purchase
5 Agreement existed at that point.

6 **Q. Have you ever seen an Asset Purchase**
7 **Agreement?**

8 A. I have, but not -- I have, yes, I
9 have, but much, much, much post bankruptcy.
10 Maybe weeks afterwards.

11 **Q. Okay. That was a badly phrased**
12 **question.**

13 **Have you -- when I meant "Asset**
14 **Purchase Agreement," I meant the Asset Purchase**
15 **Agreement that's at issue in this case, which**
16 **is the one between Barclays and Lehman.**

17 **So am I correct to understand you to**
18 **say you didn't see that agreement until after**
19 **the closing of the sale transaction?**

20 A. I believe so. It may have hit my
21 e-mail. I don't ever remember reading it. I
22 think it's highly unlikely that I saw it until
23 after bankruptcy, and it's certainly the case
24 that I was asking Jonathan Hughes post
25 bankruptcy --

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2 MR. SHAW: Let's not get into any
3 discussions you had with Jonathan.

4 MR. HINE: Is Jonathan a lawyer?

5 MR. SHAW: He is the general
6 counsel.

7 MR. HINE: So you are asserting a
8 privilege over that conversation?

9 MR. SHAW: Yes.

10 **Q. I just want to be clear. When we**
11 **talk here, when you said "bankruptcy," you were**
12 **talking LBI's bankruptcy?**

13 A. I am talking about LBI's bankruptcy,
14 yes. I had no knowledge of an APA pre
15 bankruptcy and the content of it.

16 **Q. Did you have any understanding of**
17 **what the sale transaction was supposed to**
18 **accomplish?**

19 A. I had a set of actions to perform,
20 which was providing data to my supervisor, to
21 Ian Lowitt, and those components were
22 clearly -- at certain points it became clear
23 they were part of the transaction, but I didn't
24 know what part, and I had very limited
25 understanding. It was perform this task, get

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2 the task done, and that's what I tried to
3 execute as effectively as I could.

4 **Q. And so did you ever -- again, I**
5 **understand that and we will go through those**
6 **tasks as we go, but did you ever have any**
7 **inkling about a \$70 billion figure with respect**
8 **to the assets that were going to be transferred**
9 **to Barclays?**

10 A. 70 billion?

11 **Q. Yes.**

12 A. That's not a number that sticks out
13 in my memory, no.

14 **Q. Did you ever hear anyone talk about**
15 **a discount that was being awarded to Barclays**
16 **with respect to Lehman assets?**

17 A. No. And I think when I was asked
18 what the deal content was by one of my
19 colleagues, I pointed them in someone else's
20 direction to the deal lawyers. I didn't have
21 details of that.

22 **Q. Did you have any -- I'm not asking**
23 **about whether you were involved in discussions,**
24 **but did you hear any rumors or, you know, water**
25 **cooler talk about a discount being awarded to**

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2 **Barclays as to Lehman assets?**

3 A. I don't think so, no.

4 **Q. Did you ever hear the phrase "block**
5 **discount" used in connection with the sale**
6 **transaction?**

7 A. Block discount, no.

8 **Q. Did you ever hear that phrase or a**
9 **similar phrase used when it came to valuing**
10 **assets that were supposed to be transferred to**
11 **Barclays?**

12 A. No. I wasn't focused on anything
13 related to valuation, so that wasn't really --
14 making lists of securities was different than
15 determining what they should be worth in
16 aggregate.

17 **Q. We will get into that more. I**
18 **understand.**

19 **Did you ever hear anyone refer to**
20 **the transaction as a wash transaction or words**
21 **to that effect?**

22 A. No.

23 **Q. Is it fair to say that you really**
24 **were fairly unfamiliar with the specific**
25 **contractual terms of that transaction during**

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that week?

A. Very unfamiliar.

Q. I want to show you a document -- some of these documents I am going to show you just to see if you know about them or what you know about them.

A. I'd just like to make a point. I was sending or receiving about a thousand e-mails a day at that time, I think, approximately, so documents passed across my e-mail. It was physically impossible for me to consume all that information.

MR. HINE: I understand.

Let's mark this as the next exhibit.

(Exhibit 56 B, e-mail dated May 29, 2009, Bates stamped 10295594, with attached fax, Bates stamped 10300652, marked for identification.)

Q. Mr. Blackwell, I am handing you a document that's marked as Exhibit 56 B, which appears to be an e-mail in or about Monday, September 15th, 2008, and attached to it is a fax that's addressed to you and it's attaching a document entitled Custodial Undertaking in

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Connection With Master Repurchase Agreement.

A. The repo agreement.

Q. Right. So my question to you is have you ever seen this agreement or this document?

MR. SHAW: Take a chance to look through it.
(Document review.)

A. I don't recall looking at this. I think it's a standard repo agreement.

Q. Can I just ask you a question or two about -- this repo agreement relates to an agreement between Lehman, Barclays and JPMC or JPMorgan Chase.

In your role as head of operations, did you deal with repurchase agreements of this nature?

A. We processed repurchase agreements. We didn't agree to commercial terms of a repurchase agreement, but we processed it.

Q. What do you mean by process it?

A. So in terms of the technical way that you would manage a tri-party repo agreement is that you have a tri-party agent
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and two counterparties. A firm's tri-party agent selects the collateral based on the agreement terms, what collateral becomes eligible, and will pledge that. You book something called a shell on -- operations book a shell to the value that the tri-party agent has pledged based upon their market value, and so those components are then fed into a system to record the repo transaction. So that is sort of bread and butter activity for a broker/dealer, how a broker/dealer would fund itself. So it's a daily event with multiple counterparties. Chase were Lehman's primary tri-party agent.

Q. So there was a pre-existing Master Repurchase Agreement involving these three parties; is that right?

A. I believe so. I don't know.

Q. My real question is do you know why this was executed or this was either presented to you or executed on the 15th, which is the date of the LBHI bankruptcy?

A. From looking at this it looks like they were trying to set up a new agreement. I
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don't think it was used ultimately.

Q. You don't think --

A. I don't think so, because I think -- because Bank of New York were Barclays' -- I think the attempt here was due to a technical constraint, Lehman Brothers did not have tri-party structure in place because of the volume of transactions. The operational technicalities of doing this were too complex. So the goal was to set up -- I think, I may be wrong, because I'm not the expert, the team that run this are the experts, hence why they are on here. The finance team and the treasury team and the operations team responsible for processing the repo are the experts. I believe from memory that there was an attempt to set up a Barclays arrangement with Chase at that point. I think this was scrapped as a structure. I think so, but I may be wrong.

Q. Who should I ask -- who would you ask if you really wanted -- I understand you don't have intimate knowledge, but who should I ask that question?

A. Well, the business person that would
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2 have been responsible for this ultimately is
3 John Coghlan, he would be responsible for the
4 commercial terms, and the people that work for
5 him on here would be John Feraca, who is on the
6 e-mail. Others may -- the rest of them are
7 treasury and operations people.

8 MR. HINE: Okay. I am going to hand
9 you another document now.

10 (Exhibit 57 B, Amendment Agreement,
11 marked for identification.)

12 **Q. Mr. Blackwell, I am handing you a**
13 **document marked as Exhibit 57 B, which is**
14 **entitled Amendment Agreement as of -- it's**
15 **dated as of September 15, 2008 and it's between**
16 **Barclays and Lehman Brothers.**

17 A. September 2008. Okay.

18 **Q. Right. On the front it says "dated**
19 **as of September 15, 2008." Do you see that?**

20 A. Yes.

21 **Q. My question is have you ever seen**
22 **this document before?**

23 MR. SHAW: Take a minute and look
24 through it.

25 (Document review.)

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2 A. No, I have not seen this agreement.
3 I certainly haven't read it.

4 **Q. Do you have any understanding or**
5 **guess as to why this document would have been**
6 **signed during this time period?**

7 MR. SHAW: Objection. Calls for
8 speculation.

9 A. This seems to be determining some
10 set of commercial terms which I wouldn't have
11 been involved in negotiating, so I have no idea
12 what the purpose of this agreement would be.

13 **Q. So should I ask the same folks that**
14 **you mentioned earlier?**

15 A. I think you would -- I would ask
16 John Coghlan, yes.

17 **Q. Let's get back to our discussion of**
18 **the week of September 15th.**

19 At some point in time -- well, some
20 point in time you learn on Monday, say, that
21 there is going to be a sale transaction of some
22 nature between Barclays and Lehman; correct?

23 A. There was -- I understood that there
24 was negotiations. I didn't know what that
25 would mean.

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2 **Q. Okay. And so what were you asked to**
3 **do in support of those negotiations or**
4 **agreement? Let's try to take it day by day.**
5 **Let's talk about Monday.**

6 A. My recollection of what I was being
7 asked to do was, again, figure out the funding
8 settlement matter, monitor the settlement
9 activity. So there were teams of people.
10 Monitoring settlement activity would be with
11 the various clearing bodies, which as you will
12 see over the course of the week became
13 increasingly challenging. Fielding client
14 questions when they -- or the team were
15 fielding client questions as they were arising.
16 And then the bulk of the effort in the early
17 part of the week was trying to put together a
18 project plan and a set of actions to build
19 towards a conversion, which was yet -- which
20 wasn't fully specified.

21 **Q. When you use the term "conversion,"**
22 **are you saying -- does that mean moving the**
23 **broker/dealer business to Barclays?**

24 A. That was my assumption. I don't
25 think I was ever told that. Conversions

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2 normally mean that you are converting on to
3 someone else's systems or you are moving your
4 systems. And so we were working towards a set
5 of scenarios where, for instance, I was aware
6 that Barclays had a relatively small equities
7 business and we had a very substantial one at
8 Lehman Brothers. Lehman had a very substantial
9 equity business and so it would be physically
10 impossible to transact the equity business on
11 the Barclays technologies. It's just
12 impractical. A year's worth of volume in a
13 day. So it's just technically not possible.
14 So we were working towards various things of
15 that nature, which, again, is very operational
16 in nature, time-consuming, complex and very,
17 very detailed, so a lot of my team were focused
18 on that.

19 **Q. Was it your expectation that your**
20 **team and most of the employees of Lehman in the**
21 **broker/dealer business would move over to**
22 **Barclays?**

23 A. That was my hope.

24 **Q. No one ever told you that?**

25 A. No.

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2 **Q. Okay. Can we go through some**
3 **terminology here just so I understand.**

4 I see in a lot of e-mails the phrase
5 "BONY tri-party." Can you just tell me what
6 that is meant to encompass?

7 A. BONY is Bank of New York. Tri-party
8 is a type -- is a repo.

9 **Q. Okay. I didn't mean to interrupt**
10 **you, but we have been discussing a repurchase**
11 **transaction on September 18th involving**
12 **Barclays, Lehman and BONY.**

13 Is that what you folks call the BONY
14 tri-party in the e-mail, generally?

15 A. I think that's very broad.

16 **Q. What would you understand that BONY**
17 **tri-party to be?**

18 A. Depends on the context.

19 **Q. Okay. Did there come a point in**
20 **time -- well, let's step back to the Monday**
21 **again.**

22 Did you learn at some point that the
23 fed was providing some kind of financing to LBI
24 during that week?

25 A. Yes. We had been pledging more and
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2 more of our -- we had a large repo under
3 various different schemes with the Fed.

4 **Q. When you say various different**
5 **schemes, is that -- I see acronyms PDFC, OMO**
6 **and TSLF. Is that what --**

7 A. Correct.

8 **Q. So those are three different Fed**
9 **programs?**

10 A. Yes.

11 **Q. Am I correct to say that on Monday**
12 **night, Tuesday night and Wednesday night of**
13 **that week the Fed was providing some sort of**
14 **financing under those programs to Lehman?**

15 A. It was a repo, again, pledging
16 assets through Chase and a tri-party agent to
17 the Fed and the Fed provided cash.

18 **Q. And now were you involved in**
19 **selecting the assets that were pledged?**

20 A. The mechanism by which assets are
21 selected are driven by the repurchase
22 agreements and the schedules attached to the
23 repurchase agreements that are in place. So it
24 was eligible collateral. So that's an
25 automated process in a normal course of
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2 business in that your tri-party agent will look
3 at the eligible collateral and pledge that on
4 your behalf to the Fed and then you get a file
5 from in this instance Chase, which is uploaded
6 into your system, into your repo shell to
7 reflect the securities that are being pledged.

8 **Q. Okay. Is that what took place in**
9 **this instance?**

10 A. As far as I understand, in the early
11 part of the week, that's absolutely what
12 occurred.

13 **Q. So, again, I'm not trying to put**
14 **words in your mouth. I am just trying to**
15 **translate it into something that a non-finance**
16 **person can understand.**

17 Is it correct to say that JPMC or
18 Chase selected the securities that were pledged
19 to the Fed?

20 A. That would be my understanding of
21 the mechanism. The individuals within the
22 business, treasury and operations that
23 transacted or carried out those functions could
24 give you a much more precise answer.

25 **Q. So you are talking about within**
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2 **Lehman's treasury department?**

3 A. Yes, and operations, Jim Hraska.

4 **Q. Jim Hraska?**

5 A. Yes.

6 **Q. And at some point you learned, I**
7 **take it, that there was going to be some kind**
8 **of transaction where Barclays would be**
9 **providing that financing instead of the Fed;**
10 **correct?**

11 A. Correct.

12 **Q. Tell me what you understood about**
13 **that.**

14 A. I was initially contacted -- I think
15 conversations had already been taking place
16 between John Coghlan, treasury and Barclays
17 about how a repo process would take place. A
18 gentleman called David Aranow and John Feraca
19 were -- both of them were asked by John Coghlan
20 to basically run the process of moving the
21 collateral that was currently pledged to the
22 Fed under the various programs, and I am going
23 to caveat that, I will come back to that in a
24 second, under the various programs, and the
25 collateral that was eligible over to Bank of
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2 New York. Now, I think the first conversations
3 were had on the 17th -- sorry, I think --
4 that's when I first started to hear about this,
5 I think, around the 17th, and I think it was
6 determined it was technically -- not say
7 impossible, but incredibly difficult to move
8 that amount of collateral on that day, which
9 was, I think, what had been discussed, so it
10 was then determined that that would then happen
11 the following -- I think it was the following
12 day, so there was some setup work that was
13 required and you will see that communication
14 flying around between treasury, operations and
15 business as how to set this -- set the
16 mechanism up to facilitate that. And this is a
17 very large amount of collateral --

18 **Q. Sure.**

19 A. -- so there are a lot of operational
20 complexities to it. So at that point that's
21 when I was aware that we were in the process
22 of -- that Barclays were going to be funding
23 the LBI entity through the repo and taking the
24 Fed's exposure away or relieving Fed's
25 exposure.

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2 MR. SHAW: When you reach a logical
3 stopping point, we have been going about an
4 hour.

5 MR. HINE: Do you want to take a
6 break?

7 THE WITNESS: Another five minutes
8 or so.

9 **Q. I think I understood what you just
10 said. Now, do you know if the same collateral
11 that was supporting the Fed financing on
12 Wednesday night was, in fact, transferred to
13 Barclays to support its tri-party?**

14 A. It wasn't. No, it wasn't. It
15 was -- again, there is -- it's an awful lot of
16 operational complexity, it's a huge number of
17 securities and no -- there were differences in
18 the schedule that the Fed held versus what
19 actually then ended up in Bank of New York's --
20 in Bank of New York's tri-party account.

21 **Q. Okay. So this is -- when I see the
22 phrase "Bank of New York tri-party," that's --
23 if it's dated at this time, it's probably
24 talking about the Barclays tri-party with Bank
25 of New York acting as the agent; correct?**

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2 MR. SHAW: Objection to form.
3 A. Again, it's a broad term. I'd need
4 specific --
5 **Q. I will withdraw that question. I**
6 **understand.**
7 **So what is the difference, if you**
8 **know, between the collateral that was**
9 **supporting the Fed financing on Wednesday night**
10 **and the collateral that was transferred to**
11 **Barclays on sometime Thursday?**

12 MR. SHAW: Objection to form.

13 A. There were a series of operational
14 issues that occurred at Chase, first of all,
15 and also the repurchase agreement, collateral
16 that's eligible to be transferred to BONY,
17 create a difference, so, you know, those
18 operational processes at Chase which were -- I
19 don't have any visibility over and, frankly,
20 have limited visibility at what's happened at
21 Chase post the event as well, resulted in some
22 of the collateral being delivered from the Fed
23 into the Lehman box and pended settlement took
24 place, so that the securities that were
25 released from the Fed were delivered into the

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2 Lehman box and trades that were pended for
3 settlement were settled that were unrelated to
4 the repo, but were trades that had been entered
5 into by Lehman Brothers on a previous date.

6 **Q. So am I correct -- so Chase settled**
7 **other trades with the money -- with the**
8 **securities that had been released from the Fed**
9 **funds?**

10 A. So Barclays had paid \$5 billion to
11 Chase and paid that to the Fed, the Fed
12 released \$5 billion worth of collateral, what
13 the Fed believed is \$5 billion worth of
14 collateral to Chase, and that went into the
15 clearance box and settlement took place.

16 **Q. Okay. And then so then what**
17 **collateral was ultimately transferred to**
18 **support the Barclays repo?**

19 A. There are schedules that show that
20 collateral. So again, collateral that was
21 eligible under the repurchase agreement was
22 delivered. The remaining securities that came
23 back from the Fed, some portion of them, again,
24 subject to operational friction and
25 eligibility, were then delivered to Bank of New

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York.

Q. And were you involved in that process of the delivery to Bank of New York?

A. My team were actively involved. I was doing very many different things at that time, so Monty Forrest and Jim and the team of people within the repo ops area in conjunction with the treasury department and with the trading desk, the financing trading desk, were all working hard to get that. I was being asked also questions by my management and whether these things were happening. I was also liaising with Barclays when -- certainly when the first 5 billion -- we were trying to do it in 5 billion pieces so there was no daylight exposure to Lehman. That mechanism resulted in the outcome I described before, which was some leakage, because of Chase's method -- Chase's internal operational issues, and so there was some discussion, but it went very quiet for a period of time until the 40 billion of cash was paid by Barclays or the 45 billion of cash was paid by Barclays, and then settlement took place with the Fed and DTC.

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Settlement processes were kept open until the early hours of the morning, which is unprecedented, to allow this massive volume of collateral to work its way through the system and settle.

Q. You mentioned someone named Jim. Is that Jim Hraska?

A. Jim Hraska.

Q. Is it fair to say he was more mired in the details of this transfer of collateral than you were?

A. Absolutely. He is an industry expert in the space. The Fed consult with Jim, so he is expert in this process.

MR. HINE: Okay. Why don't we take a break now. I have some documents to show you about this whole topic, so you need to rest up.

(Recess was taken from 10:31 to 10:42.)

BY MR. HINE:

Q. Mr. Blackwell, we were talking about the transition from the Fed repo arrangement on Wednesday to the replacement transaction with

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Barclays and BONY on Thursday.

Before we get into how that took place and any problems that had to do with that, could I just run a couple documents by you just so I can understand what's being said in these e-mails to the extent you remember. I know you had several e-mails during that period of time, but let's just start with this one.

MR. HINE: Let's mark that.

(Exhibit 58 B, e-mail dated September 17, 2008, Bates stamped 77752, marked for identification.)

(Exhibit 59 B, e-mail dated 9-17-2008, marked for identification.)

Q. Mr. Blackwell, I handed you an e-mail which we have marked as Exhibit 58 B which is an exchange between you and some other folks on Wednesday, September 17th, and some earlier e-mails below.

I just wanted to understand what's -- you appear to be congratulating some folks here about doing a good job. In one of the e-mails Mr. Feraca talks about yielding the max from both PDCF and Barclays financing.

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Could you just give me a sense of -- was this a difficult effort to get this financing in place on Tuesday?

A. I think it was hard all week. It was a very challenging environment to be operating in, to say the least. I just think John as the person responsible for financing and I think it's just congratulating everyone for -- under the construct of the agreement to delivering an excellent result and just thanking people. I have no more information about this than that.

Q. My question is this was a Tuesday night e-mail, the one in the middle. Now, the PDCF, that's referring to the Fed's financing; correct?

A. The Primary Dealer's Credit Facility.

Q. That's a Fed program?

A. Fed facility, yes.

Q. Now, it also refers to Barclays financings in the same sentence.

What financings does Barclays have in place on Tuesday?

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A. I don't recall. I'm assuming it's referring to a repo, but I have no idea.

MR. SHAW: Bill, just so it's clear, although the date that appears on the sent line says Wednesday, September 17th, it's Greenwich meantime, so it's also Tuesday.

MR. HINE: You are right.

Q. I guess my main point for that document is you don't really have any knowledge of other of Barclays' financings on the Monday, Tuesday, Wednesday of that week?

A. Correct.

Q. So your role during that week with respect to Barclays' financing was the one that was put in place on Thursday to replace the Fed financings of Wednesday night; is that right?

A. Yes.

Q. Okay. If you could turn to the next document, which is marked as Exhibit 59 B, again, it's an e-mail stream involving yourself and others. It talks in the bottom about not doing the Barclays PDCF trade tonight. Do you see that language?

A. Yes.

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Q. Now, this is Wednesday night, and I believe you previously testified, was there a discussion of possibly doing that transition transaction on Wednesday night?

MR. SHAW: Objection to form. It's not clear to me what the "this is Wednesday night" refers to.

MR. HINE: Let me just rephrase it.

Q. You see the e-mail at the bottom of this document which is sent says it's sent on Wednesday, September 17th. Do you see that?

A. Yes.

Q. And the first line of that e-mail says "we are not doing the Barclays' PDCF trade tonight." Do you see that?

A. I do.

Q. And that's Mr. Ullman sending that e-mail to you; correct?

MR. SHAW: Can I just note for the record the witness is underlining the phrases you have pointed out to him on the exhibit.

MR. HINE: Okay.

MR. SHAW: I'm not allowed to do

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that, I take it.

MR. HINE: Probably a good idea just to --

THE WITNESS: It's a habit.

MR. HINE: Okay. Not a problem.

Q. My question was what discussions were there about possibly having the Barclays take over this financing role from the Fed on Wednesday night?

MR. SHAW: Objection. Foundation.

A. I don't have any -- I wasn't involved in those discussions, so -- you would probably -- yeah, I wasn't involved in those discussions.

Q. Okay. Continuing on with that e-mail, it says "we will be increasing the tri-party trade we have been doing with Barclays at BONY to 13 billion." Do you see that?

A. I do.

Q. What is that referring to?

A. It refers to the fact that Barclays would be extending financing for that night of 13 million.

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Q. So this is a separate tri-party that Barclays has with Lehman and BONY?

A. The same tri -- they are a tri-party. A tri-party agreement is one tri-party agreement. So this is an arrangement where Barclays are providing cash in return for securities.

Q. Okay. So the 13 billion refers to the amount that's apparently needed to get through that night or to get into the next day; is that right?

A. Or that was the available collateral. I don't know why 13 billion was 13 billion, but that was the transaction that was done.

Q. Could you just -- what is your understanding of why Barclays did not affect this transaction on Wednesday as opposed to Thursday?

A. My understanding was that it wasn't the case of Barclays -- it wasn't the case that Barclays didn't want to. It was technically un -- it wasn't feasible to actually put a mechanism in place to allow that transaction to

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2 happen.

3 **Q. Okay.**

4 A. Because of the scale and complexity.

5 **Q. So why was it possible to do that on**
6 **Thursday?**

7 A. Because a mechanism was put in
8 place.

9 **Q. So you folks had been working on**
10 **putting this mechanism in place previously?**

11 A. No, that day. So it was -- when --
12 on the Wednesday, then through Wednesday
13 through Thursday there was a mechanism put in
14 place.

15 **Q. As to the collateral that was**
16 **originally supporting the Fed, and you**
17 **described that some of it made it to Barclays**
18 **but there were issues as to that transfer, did**
19 **you have any role in placing a value on that**
20 **collateral?**

21 A. Operations are not placing a value
22 on the collateral. The systems that operations
23 use have a value associated with them, so not
24 figuring out that this equity or this bond is
25 worth -- we are not marking the security in

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2 that regard. Chase, again, would have primary
3 role in terms of collateral selection based on
4 the schedules of the agreement.

5 **Q. And did you ever hear any**
6 **discussions about a discount or a haircut that**
7 **was applied to that collateral?**

8 MR. SHAW: Asked and answered.

9 A. No. Not that I recall, no.

10 **Q. Okay. What do you understand the**
11 **term "haircut" to mean with respect to repos**
12 **generally?**

13 MR. SHAW: Objection. Foundation.

14 A. I would -- I'm not an expert in
15 terms of that process, so, again, commercial
16 components would be agreed by the business.

17 **Q. Could you describe for me -- well,**
18 **let me just ask about two other documents**
19 **before we go further.**

20 (Exhibit 60 B, e-mail dated
21 9-18-2008, marked for identification.)

22 **Q. Mr. Blackwell, I am handing you a**
23 **copy of the document marked as Exhibit 60 B,**
24 **which is an e-mail stream which appears to be**
25 **dated September 18th, 2008, and attached to it**

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2 is a spread sheet of some sort. I know that --
3 I don't see your name on this e-mail, but I
4 wanted to ask you about the spread sheet that's
5 attached.

6 **Have you ever seen a spread sheet**
7 **like this?**

8 MR. SHAW: Objection. Form.

9 A. It's possible I have seen one. I
10 don't recall seeing one, but it's a schedule of
11 collateral values. It's being provided by -- I
12 assume this is being provided by JPMorgan.

13 **Q. Why do you say that?**

14 A. Because of who it's being sent from.

15 **Q. The title of the spread sheet says**
16 **BONY Transaction Anticipated Pre Funding. Do**
17 **you have any idea what that could mean?**

18 A. No.

19 **Q. Do you have any idea what the column**
20 **to the far right means where it says**
21 **Anticipated Pre Funding Dollar Amount?**

22 A. Only just the literal interpretation
23 of the title. It's a valuation.

24 **Q. Do you have any understanding of the**
25 **value of the different types of collateral that**

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2 were posted to the different Fed programs
3 listed here?

4 A. At the time?

5 **Q. Yes.**

6 A. Possibly. I mean, I didn't look at
7 the detail. And, again, the detail is
8 thousands of CUSIPs. It's meaningless looking
9 at lists. It does have to be applied based on
10 the rules.

11 **Q. Do you have any understanding of the**
12 **aggregate amounts of the collateral you were**
13 **trying to transfer?**

14 A. I knew we were trying to transfer
15 \$45 billion. That was the headline number,
16 approximate number.

17 **Q. Is it fair to say there were some**
18 **problems in transferring the collateral to or**
19 **unexpected issues arose with respect to**
20 **transferring the collateral from the Fed**
21 **program to the Barclays repo?**

22 MR. SHAW: Objection to form.

23 A. There were problems, yes, there
24 were.

25 **Q. Could you just generally describe**

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for me what the problems were and how they
resolved themselves or didn't resolve
themselves?

A. The process was designed that Chase would pay -- sorry, Barclays would pay \$5 billion, and I explained this earlier, \$5 billion to -- Barclays would pay that to Chase, Chase would pay that to the Fed, the Fed would deliver \$5 billion in collateral.

MR. BYMAN: Could I ask you to speak a little louder.

THE WITNESS: Okay. Do you want me to repeat that?

MR. BYMAN: If you would, I'd appreciate it.

A. Barclays paid -- my understanding was Barclays paid Chase -- paid Lehman, their tri-party agent, Chase, \$5 billion. \$5 billion was paid to the Fed. The Fed released \$5 billion worth of collateral. Their valuations, not Lehman's valuations, but their valuations based on what had been pledged the previous night. That collateral came into Chase's box and was not delivered to BONY, to

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Bank of New York.

Q. To satisfy other transactions that you mentioned earlier?

A. Yeah, and I don't have visibility over what those transactions were.

Q. So was this -- could you just kind of relay what you tried to do to resolve this issue?

A. I didn't try and resolve the issue. A team of people that were managing it for me, Monty, the global head of that function, and Jim worked hard with treasury and my settlements team as well to try and resolve that issue, but it was mainly a dialogue with Chase, the Fed, and there was an open line in place that was being managed out of Jim's office.

Q. Okay. And were you -- when you say "open line," what do you mean by that?

A. Open conference -- a phone line that every participant could dial into.

Q. And did you participate in that conference call?

A. I may have been on it briefly, very,
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very briefly. I wasn't sitting in that room. I was in and out.

Q. Is it fair to say that Jim Hraska or the other individual you mentioned are the ones that have in-depth knowledge of how this problem was addressed?

A. Jim Hraska.

Q. Okay. Do you have an understanding of whether the full compliment of collateral that Barclays was expecting to be posted to their repo ever made it to Barclays?

A. I don't believe the full value made it, no.

Q. Do you know what amount did not?

A. Exact numbers, no, but the full amount did not make it.

Q. Do you have approximate numbers?

A. Off the top of my head, I don't. It would be in an e-mail, but it wasn't the complete amount.

Q. Is there a \$7 billion number that -- does that sound like the approximate amount?

A. There was a cash repo that I understood that was put on for 7 billion that

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night as well which was pledged to Barclays to make up some of the shortfall.

Q. Okay. Did that money go to Barclays?

A. I understand that it did or should have done, but it was held properly -- I don't know. Actually, I don't want to misspeak. It's probably in my -- again, it would be in my e-mail.

Q. And when you said put in place, that was Thursday night?

A. Overnight Thursday, yes, into the early hours of Friday.

(Exhibit 61 B, e-mail dated 9-17-2008, marked for identification.)

Q. Mr. Blackwell, I am handing you a document that's been marked as 61 B, which is an e-mail stream dated September 17th, 2008, and the subject line reads "key points from today's call with Alastair pertinent to equities."

My question to you is have you ever seen this document?

A. I would have seen it in my -- I was
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2 probably on the distribution.

3 **Q. Well, this is one of my questions**
4 **where I am not sure I'm on the same topic we**
5 **were just talking about.**

6 **Can you tell me what this call you**
7 **had had to deal with?**

8 A. About conversion. John Neave was
9 one of the project managers who worked with
10 Samantha Hoban. He wasn't an employee --
11 direct employee of mine, a resource within the
12 project team looking at conversion. So these
13 meetings were happening periodically. More
14 than probably daily. Talk about what we knew
15 and what we didn't know and where we were in
16 terms of the project, and I would imagine that
17 you will see there are project plans and
18 updated project plans that go with each one of
19 these meetings, so these meetings were intended
20 to facilitate the conversion as we understood
21 it. So as information became available, the
22 project plan would change.

23 **Q. Okay. And so this is, just to**
24 **clarify, so this is not related to the repo**
25 **issue we were just talking about, this was your**

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2 **plan or this is your folks' effort to**
3 **transition the broker business to Barclays in**
4 **some form?**

5 A. Yes.

6 **Q. I just had a couple of questions**
7 **about some of these lines here.**

8 **In the second sentence it says "the**
9 **074 box will simply roll up to the existing**
10 **Barclays B/D, i.e., a second DTC network."**

11 **Can you just tell me what that's**
12 **referring to?**

13 A. Okay, so that's as it relates to a
14 broker/dealer, Barclays broker/dealer. 074 was
15 Lehman's DTC clearing box. At that point there
16 had been a discussion or assumptions made that
17 the clearing boxes would move at that point.
18 That subsequently changed.

19 **Q. How did it change?**

20 A. Over the course of the weekend it
21 was clear that Barclays were not taking
22 responsibility for the clearing boxes or any of
23 their liabilities in the clearing boxes and
24 that became a point of negotiation, I
25 understand, with the regulators. I wasn't

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2 involved in those discussion, but it became
3 clear that that assumption was, in fact,
4 faulty.

5 **Q. Okay. Could you just tell me, you**
6 **said you were not involved in those**
7 **discussions?**

8 A. No, I wasn't.

9 **Q. What did you understand about them?**

10 A. Nothing apart from really what I
11 have just shared with you.

12 **Q. Okay. So how -- were you involved**
13 **in any discussions or did you have any**
14 **understanding relating to a payment of**
15 **\$250 million between Barclays and the DTC?**

16 A. I'm aware of that. Again, I'm not
17 sure how that number was calculated or what
18 consideration it is related to, to be honest.

19 **Q. Are you aware whether that payment**
20 **was ever made or how it all ended up?**

21 A. No.

22 **Q. The next bullet here talks about an**
23 **inventory of unencumbered LBI assets will be**
24 **identified based on the stock record on**
25 **Thursday night and will be priced at Thursday's**

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2 **close. Then it goes on to refer to the assets**
3 **that underpin the purchase agreement.**

4 **Do you see that paragraph I am**
5 **reading?**

6 A. I do.

7 **Q. Could you tell me what's at issue in**
8 **that discussion?**

9 A. At that point I had an understanding
10 that there were a schedule of assets that were
11 going to be purchased and transferred. Again,
12 I believe the model -- and this is a point in
13 time. That was the understanding of what was
14 happening at that point. Post that things may
15 have changed, but that was the understanding.
16 So in terms of thinking about this from an
17 operational perspective, I would be given that
18 list and then I would figure out a way to
19 mechanically transfer it. So this is what the
20 action here is thinking -- is considering. I
21 don't know that I ever saw a list.

22 **Q. Okay. So just not to -- I just want**
23 **to understand what you said. At this time on**
24 **Wednesday you are thinking that you are going**
25 **to be given a list of assets and that you need**

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2 **to somehow figure out how to transfer them to**
3 **Barclays. Okay.**

4 **Were you told at some point that**
5 **that was not going to take place?**

6 A. After the Friday.

7 **Q. What were you told?**

8 A. That there wasn't a conversion, and
9 I think you will see that in my e-mail trails
10 as well, that I was asked to come to a meeting
11 on Friday night, I think it was Friday night,
12 Friday about 5:00, and was told that there
13 wasn't a conversion and I needed to be working
14 towards being ready for business as Barclays on
15 Barclays -- get Barclays Capital ready for
16 business on the Monday.

17 **Q. I guess I don't understand what you**
18 **mean by there is no conversion in that context.**

19 A. Again, all the work that we had done
20 over the course of that week, how we
21 collectively, this group of people, thought a
22 transaction -- assumed a transaction might take
23 place, there wasn't going to be a conversion of
24 LBI as a going concern or any of these entities
25 or any of the contents of the entities as a

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2 consideration. What I was being asked to do,
3 to try and facilitate Barclays Capital's
4 ability to transact on the Monday or the
5 Tuesday, whenever we were going to go live,
6 various different asset classes. So that
7 was the -- my primary driver, again, was get
8 everyone together to start to be able to
9 support business as much as possible as usual.

10 **Q. And this was as of Friday you were**
11 **told this?**

12 A. On Friday, I think late on Friday we
13 were told that that was going to happen. I
14 actually -- it may have actually been -- the
15 marching orders may have been given to me the
16 following morning, actually, because I think at
17 that point it was unclear exactly what was
18 going to happen, but I was told there was no
19 conversion at that point. That was very clear.
20 So the details that were in here, a lot of
21 these things were becoming obsolete or -- as
22 time passed, so this is a point in time in a
23 process that operations and finance would go
24 through.

25 MR. SHAW: And just so it's clear,
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2 going concern.

3 **Q. And what was going to take its**
4 **place?**

5 A. I didn't know at that point. I
6 didn't know at that point. And an agreement
7 hadn't been signed, so that wasn't shared with
8 me. So my marching orders became quite clear
9 that I should go off again, similar to a
10 conversion, be ready to be able to transact as
11 Barclays on the Monday. To support -- let me
12 correct that. I don't transact. Support
13 transactions as Barclays Capital.

14 **Q. So by that you meant -- you**
15 **understood -- is it correct to say that you**
16 **understood that to mean you were going to be**
17 **moved over to Barclays and somehow some assets**
18 **were going to be transferred, or did you have**
19 **any understanding of what assets were going to**
20 **be transferred to Barclays?**

21 A. None. Wasn't making an assumption
22 that any assets were to transfer. At this
23 point what I was talking about was the
24 ability -- whether I was going to be a Barclays
25 employee or not was unclear and that wasn't a
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2 when the witness said "on here," he was
3 pointing to Exhibit 61 B.

4 **Q. Were you told that the assets that**
5 **had been posted as collateral to the Barclays**
6 **BONY repo were going to be sold to Barclays?**

7 A. Sold, no. I didn't -- I wouldn't
8 assume that, no.

9 **Q. Were you told that they were going**
10 **to be somehow rolled into the Asset Purchase**
11 **Agreement as purchased assets?**

12 A. I didn't know there was an Asset
13 Purchase Agreement at that point.

14 **Q. Did you have any involvement in the**
15 **Clarification Letter that was prepared over**
16 **that weekend?**

17 A. I don't believe so. I contributed
18 data to my superiors who may -- my supervisors
19 and others that asked, but who may have then
20 used that as part of the clarification letter,
21 but I didn't contribute directly.

22 **Q. So when I use the term**
23 **"Clarification Letter," is that a new term to**
24 **you?**

25 A. At that time it was something I was
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2 unfamiliar with. Post of the event, yes, it's
3 something I became aware of.

4 **Q. Since you have been at Barclays you**
5 **have seen it?**

6 A. Yes, I don't know whether I have
7 seen it, but I am aware of its existence.

8 **Q. And what's your understanding of**
9 **what that Clarification Letter did with respect**
10 **to the transaction?**

11 MR. SHAW: Foundation.

12 A. I actually don't know. I really --
13 I don't know. I know a Clarification Letter
14 exists and I don't recall reading it. It's
15 been referred to. That's all.

16 **Q. Do you have any understanding of the**
17 **two schedules that are attached to the**
18 **Clarification Letter, which are called**
19 **Schedules A and B?**

20 A. I am aware of Schedules A and B,
21 yes.

22 **Q. What are you aware of about them?**

23 A. Schedule A is the original repo
24 transaction, the original Fed repo transaction,
25 the assets are transferred to BONY. Schedule B
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2 was unencumbered assets within the clearing
3 boxes.

4 **Q. Just so I understand that, we have**
5 **been talking about the Fed repo which was**
6 **replaced by a Barclays repo and those -- that**
7 **collateral was to comprise Schedule A; is that**
8 **right?**

9 MR. SHAW: Objection to form.

10 A. My understanding is Schedule A was
11 the collateral that made it to Barclays. Now,
12 in a normal repo process there is substitution
13 and change, so it doesn't always work, it's not
14 always going to be precise, and that's just
15 reality. Every single repo that would be
16 processed would be different.

17 **Q. So your understanding was that the**
18 **collateral that was posted to the Barclays repo**
19 **was to become -- was to be included in**
20 **Schedule A?**

21 MR. SHAW: Objection to form.

22 MR. HINE: You can answer.

23 A. I think that would be my
24 understanding.

25 **Q. And is this an understanding that**
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2 **you had during that weekend or is this**
3 **something you developed later?**

4 A. Afterwards. I didn't spend any time
5 in terms of reconciling -- as an operations
6 organization we are reconciling and there was a
7 transfer of information between the parties
8 that would share information and Chase stopped
9 providing us with information on the Friday
10 morning, so we had no visibility over what was
11 going on there, but we did compare what had
12 transferred between Barclays and Lehman to
13 ensure that we were reconciled, and seen there
14 a very small difference of -- what we had
15 recorded on our books was less than
16 \$30 million. So it was an accurate reflection
17 of what transferred. Or our books are an
18 accurate reflection of what transferred.

19 **Q. How about Schedule B, did you have**
20 **any role with respect to Schedule B over that**
21 **weekend?**

22 A. Yes. I mean, over the course of the
23 weekend my team were working with treasury to
24 refine a list of unencumbered assets sitting
25 within the clearance boxes.

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2 **Q. And why were you doing that?**

3 A. Because I was asked to do it.

4 **Q. Did you have any understanding as**
5 **part of the transaction why that was being**
6 **done?**

7 A. That was part of -- all I had was
8 there was negotiations going on and I was asked
9 to find -- to identify a set of securities that
10 were unencumbered in the clearance box.

11 **Q. Did you have any understanding about**
12 **that being used to fill some shortfall in the**
13 **assets that were supposed to have been**
14 **transferred to Barclays?**

15 A. I didn't know why precisely, so no.
16 What I was trying to do was mechanically create
17 a list or assist in mechanically creating a
18 list of assets that were unencumbered.

19 **Q. And when you say "unencumbered,"**
20 **what does that mean in that context?**

21 A. Unencumbered means there was a
22 methodology applied which would be firm --
23 predominantly firm inventory or assets that
24 were available to be re-hypothecated.

25 **Q. And were you only looking in the**
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clearance boxes at DTC?

A. We were looking -- we looked at Euroclear. We looked in several places.

Q. Could you just tell me the places you looked.

A. From memory, I think it was Canada, the Canadian depo, DTC, and Euroclear. Two -- I think two boxes at DTC and a physical box at Chase, I think. Again, this is -- I may not be a hundred percent precise, but those depots would be the primary locations.

Q. When you say "we looked," can you describe for me is this -- when did you start looking?

A. I think there was an ongoing process over the course of the weekend. I don't know when precisely. Again, I think you will find I was actually in the office all of the night on Thursday, so Thursday, Friday became one day and all that time I don't have an exact recollection of when that happened.

Q. Okay. But is it fair to say it was sometime at end of the week, it wasn't an effort started Monday or Tuesday?

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A. Oh, absolutely not.

Q. And did you look at the OCC as well?

A. Possibly. I can't comment on that.

Q. Just for my own, I see reference to an 074 box and then a 636 box. Could you explain to me the difference between the two?

A. The 074 box is predominantly an equity clearing box, DTC clearing box, and -- sorry, 626 box?

Q. 636.

A. 636 is predominantly corporates, corporate bonds.

Q. I see something else referred to as a non-actionable box. Is that a term you are familiar with?

A. Yeah. The non-actionable box, I believe, was the list of securities that we thought were -- some securities are actionable, some securities are not. Securities that are customer assets, for instance, you wouldn't -- they are not unencumbered, they are fully-paid-for customer assets, so that's the difference between the two.

Q. Now, when you did this effort over

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the weekend to assemble these assets that were to go into Schedule B, did you know there was going to be a Schedule B or were you shooting towards that goal?

MR. SHAW: Objection to form.

Q. Bad question, but you can still answer it.

A. I was creating a schedule. I didn't know what it was going to be called, what it was going to be used for. Again, I was working with a very large group of people to produce this, so...

Q. I guess I was asking did you know the term "Schedule B" or that it was going to be a schedule to a Clarification Letter at that time?

A. I didn't know it was going to be a schedule to a Clarification Letter. It may have been labeled as Schedule B, but, again, I didn't know its purpose.

Q. Fair to say you were not involved in any of the court proceedings in the bankruptcy?

A. No.

Q. Is it fair to say that you didn't

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help prepare documents that were filed in any of the courts?

A. Not directly, no.

MR. SHAW: I think we had a slight ambiguity. I believe you asked is it fair to say he was not involved and he said no, but I think the intent was --

MR. HINE: Let me just ask it again.

Q. Were you ever involved in preparing documents that were to be filed in the bankruptcy proceeding in this case?

A. I prepared documents for my management which would invariably -- some content of that would have gone into the bankruptcy proceedings.

Q. Is it fair to say that you were not involved in preparing the Clarification Letter and its schedules that were ultimately filed with the court?

A. I certainly didn't prepare the letter, but there may have been data that came from -- that I contributed to that were part.

Q. Let's get back to this effort to locate unencumbered assets.

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How many assets did you locate?

What's the value of the assets that you located, if you recall?

A. I think it was -- initially it was about -- it was over \$2 billion, but there was Lehman paper within there, so it's difficult to put a value on that, so...

Q. And who places the value on those assets?

A. Normally that would be model driven, so the finance organization would place a value on it or a third-party source.

Q. And is it fair to say that your operations group did not place the value on those assets?

A. That's fair.

Q. I apologize for jumping back to the Schedule A and the repo, but as to the valuation of the assets that are posted as collateral for the Barclays repo, we see reference in some of the documents to BONY placing a value on them. Why is BONY placing a value on those assets?

A. Because they are Barclays' tri-party
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agent. You would expect them to place a value on the collateral that they received.

Q. And is that valuation that's different or was different than the valuation that Lehman had placed on those assets?

MR. SHAW: Objection. Foundation.

A. I believe it was different by -- I'm not sure the exact amount.

Q. Do you recall any discussions about the difference between those two values?

A. I didn't have any of those discussions, so no, I don't recall those discussions.

Q. That would not fall within the operation group's purview generally?

A. Jim may have had conversations with them, with Bank of New York, Chase and the Fed at that time, but he would be the right person to ask.

Q. So is it fair to say you would not have intimate knowledge of BONY's valuation of those assets?

A. No, I wouldn't.

MR. HINE: I want to show you
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another document.

(Exhibit 62 B, e-mail dated September 17, 2008, Bates stamped 10293351, marked for identification.)

Q. Mr. Blackwell, I am handing you a copy of a document marked 62 B, which is an e-mail between Mr. Ullman and yourself on September 17th, 2008.

Have you ever seen this document before?

A. I would have thought so, yes.

Q. Can you just take a minute and review it and see -- my question to you is going to be what is Mr. Ullman being cynical about or concerned about?

MR. SHAW: Objection. Foundation.

A. I don't know exactly what's going through his mind, but I think you can see from the e-mail that he has uncertainty about we don't know the terms of a deal and he is speculating about -- he is speculating about what is going on. That is all. I have no idea why he thought this. You would have to ask him.

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Q. Do you have any recollection of discussing this issue with him or anyone else?

A. No. I didn't have time to discuss conjecture and speculation at that point in time. I was purely doing my function as much as I possibly could.

MR. HINE: I want to show you
another document.

(Exhibit 63 B, e-mail dated September 19, 2008, Bates stamped 10294630, marked for identification.)

Q. Mr. Blackwell, I am handing you a document marked as Exhibit 63 B, which is an e-mail stream involving yourself from the period September 19th, 2008 dating back to the prior date, September 18th. I don't have many questions about this document.

What I really want to ask you about is I see a series of documents like this, e-mails, discussing fails, so I just want to understand what fails are and how they related to what you were doing at this point in time.

A. I think there were a lot of questions being asked about the clearance

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2 boxes, exposure in the clearance boxes, and I
3 think this relates to ultimately the conclusion
4 that the only assets being transferred were the
5 unencumbered assets of the clearance boxes, but
6 not the fails.

7 **Q. Could you just tell me what fails**
8 **are in this context?**

9 A. Fails are transactions that have
10 been entered into where you are receiving cash
11 or securities --

12 MR. BYMAN: I'm sorry,
13 Mr. Blackwell, I cannot hear you.

14 A. Definition of a fail is where a
15 security is to be delivered and cash to be paid
16 with either counterparty, and so fails would be
17 a list of failed to receive securities and
18 failed to receive cash where securities were to
19 be delivered. So that is a fail. So that --
20 if you are taking responsibility for the fails,
21 you are taking responsibility for the overall
22 clearance box. If you are not taking
23 responsibility for the clearance box, you are
24 not taking responsibility for the fails. And
25 that is -- this is where the questions -- where

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2 and get it from Chase ever since bankruptcy.

3 **Q. Can you tell me the position that**
4 **Barclays took with respect to fails?**

5 MR. SHAW: Objection to form.

6 A. I was asked by my -- again, my
7 superiors to try and explain what the fails
8 situation was and I think on several occasions
9 over the course of the week we provided data --
10 I provided data to the Barclays, Barclays'
11 lawyers or to my management with a status and I
12 think there was some communication where I said
13 I wasn't going to focus on this, I am going to
14 focus on the conversion now again, so we
15 provided the fails data and moved on and then
16 that sort of died as far as in my thought -- in
17 my recollection the issue died until the -- I
18 think the Sunday, I think it's the 21st, when
19 that was then brought up again in -- I think
20 that was -- I was started -- I was asked
21 another set of questions around that.

22 **Q. And what do you remember about that**
23 **conversation?**

24 A. Just to explain what fails were.

25 **Q. And who was that with, Barclays**

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2 questions are arising. There were questions
3 over the weekend as to the amount of fails and,
4 again, the visibility that we had was very,
5 very -- was limited because of the data that we
6 had received.

7 **Q. When you say "visibility," you mean**
8 **DTC had this data and you guys couldn't tell**
9 **the percentage of fails?**

10 A. We couldn't see data properly, but
11 that -- we had given -- yes, absolutely. We
12 had limited -- Chase in particular, that was a
13 major challenge for us, because it hadn't
14 provided us with any activity data that had
15 taken place on the Friday or I think since the
16 Thursday night.

17 **Q. Aren't you entitled to that as their**
18 **client or customer?**

19 A. Yes.

20 **Q. And did you argue with them about**
21 **that?**

22 A. Yes.

23 **Q. And what was the result of that?**

24 A. We still didn't get the data and I
25 believe Hughes Hubbard has been fighting to try

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2 **or --**

3 A. No, that was with my own management.
4 And then I think I had some conversations with
5 our trading desks about that as well.

6 **Q. Your management in this regard is**
7 **who, Mr. Lowitt?**

8 A. It was probably Ian. It may have
9 been Alex Crepeau as well.

10 **Q. Were you party to any discussions**
11 **they might have then had with Barclays about**
12 **this issue?**

13 A. No.

14 **Q. Do you know how this issue was**
15 **resolved between Barclays and Lehman?**

16 A. I left the Weil offices at that
17 point. I hadn't been in any of the rooms
18 negotiating anything. I had just been in an
19 ante-room providing information to my
20 management, as I said. I returned to the
21 office to continue working on the unencumbered
22 assets.

23 **Q. What date was this?**

24 A. I think that was a Sunday. Again,
25 the timing may be slightly off, it may be

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2 Saturday or Sunday, but it was over the
3 weekend.

4 **Q. So in the end did Barclays end up**
5 **getting the fails?**

6 A. No. Barclays did not take
7 responsibility for the clearance box, just the
8 unencumbered assets sitting in the clearance
9 box.

10 **Q. Okay. I am not trying to put words**
11 **in your mouth. So you were able or your team**
12 **was able to take certain unencumbered assets**
13 **out of the clearance box and somehow it was**
14 **transferred to Barclays, just those assets?**

15 MR. SHAW: Objection.

16 Mischaracterizes prior testimony.

17 A. I made a schedule of unencumbered
18 assets and in the following week there was
19 discussion with the trustee of LBI to move some
20 assets and some assets did move based on that
21 schedule.

22 **Q. Okay. And those were unencumbered**
23 **assets?**

24 A. Unencumbered assets.

25 **Q. So just so I understand, that would**

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2 **not have included the fails?**

3 A. Does not include the fails. Now, I
4 want to clarify one point here as it relates to
5 PIM, because PIM was the private investment
6 management business. That hadn't transferred
7 at that point. Assets did transfer
8 subsequently and the PIM business doesn't have
9 any fails either, its contractually-settling
10 business, so it's a non-fail environment. So
11 the full set of customer assets are in the
12 customer accounts.

13 MR. HINE: Let's mark this.

14 (Exhibit 64 B, e-mail dated
15 9-18-2008, marked for identification.)

16 **Q. Mr. Blackwell, I am handing you a**
17 **document marked as Exhibit 64 B, which is an**
18 **e-mail between yourself and Mr. Eickbush dated**
19 **September 18th, 2008 and it references in the**
20 **subject line something called a fails call, and**
21 **I believe this is the topic we have just been**
22 **discussing?**

23 A. I'm sorry, what day is this?

24 **Q. Upper right-hand corner says**
25 **September 18th.**

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2 A. Okay, yes.

3 **Q. Do you have any recollection of that**
4 **fails call?**

5 A. I don't think Greg was on that call.
6 I have a recollection of a call with the
7 Barclays lawyers on that -- I think over that
8 night, so that's the Thursday night. Again, we
9 were trying to ascertain the value and the
10 number of fails and, again, it's sort of
11 pertaining to taking control of the box or just
12 taking the inventory.

13 **Q. Okay. And do you recall anything**
14 **else about that call?**

15 A. I provided data, which is, again, in
16 my e-mail, which was provided to the Weil
17 lawyers as well, and that was the end of the
18 discussion. I think we spoke to Bart and just
19 told him what we had done and that was it and
20 that was the end of the issue until the
21 weekend.

22 **Q. I see the use of a phrase in this**
23 **e-mail "cherrypicking of assets." Do you see**
24 **that?**

25 A. Yeah. I don't -- he wasn't on the

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2 call, so this is conjecture and speculation on
3 his part. I don't know. You would have to ask
4 him why.

5 **Q. Does that phrase have any meaning to**
6 **you in this context?**

7 A. I think the latter part of that
8 sentence makes more sense. I think what he is
9 saying is, my interpretation of this, and you
10 should ask Greg for his perspective, would be
11 that the unencumbered securities within the box
12 are part of any transaction potentially, and,
13 again, he wasn't party to any deal details or
14 nor was I, so this is his speculation, so he is
15 speculating that it's unencumbered assets.

16 (Exhibit 65 B, e-mail dated

17 September 19, 2008, Bates stamped 10298087,
18 marked for identification.)

19 **Q. Mr. Blackwell, I am handing you a**
20 **copy of an exhibit marked 65 B, which is Bates**
21 **stamped 102 -- not Bates stamped, but it's**
22 **marked with numbers at the bottom 10298087**
23 **through -- well, actually, they are all marked**
24 **087, but it appears to be an e-mail stream from**
25 **September 19th in which you are one of the**

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recipients.

MR. SHAW: Take your time.

A. It is just going to take a little bit of time for me to read.

Q. Sure. If it helps you, my question is going to be on the first page.

A. Yeah, but I would still like to read the --

Q. Sure. Sure.

(Document review.)

A. Okay.

Q. Have you had a chance to review the document?

A. I have. Thank you.

Q. My question relates to the e-mail from Mr. Dolan to several people including yourself where he says "let's be very clear here, there is no such thing as cherrypicking. Per Berkenfeld and Lodato, all positions will move."

Could you just tell me what is the issue here? I see the phrase "cherrypicking" and I just want to know what's at issue in this communication.

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MR. SHAW: Objection. Foundation.

A. The whole e-mail trail is about a conversion, a conversion position.

Q. Okay.

A. And I'm just trying to ascertain exactly when this was, but, again, it looks like this was on the Thursday and there was an assumption, as you can see, by everyone involved here that there is an assumption that a conversion is taking place, therefore, the boxes are moving -- the clearing boxes are moving over. What this, in fact, is then talking about is just firm accounts. I think the title of the e-mail is talking about firm account transitions and is very specific about trading, trading positions, but this is redundant. This is redundant. This is up to a point in time and this is not what then came to pass ultimately, I don't believe, so, again, this is based on a team of people, technology operations, finance and business working on a set of assumptions which were faulty ultimately or became redundant because another set of decisions were made by senior management.

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Q. Okay. Let me just see if I understand that.

Are you saying that this use of the term "cherrypicking" does not relate to the fails that we just talked about previously; correct?

A. No. As far as I -- the way I am interpreting this document, it's not. I would interpret this by looking at firm accounts and saying we have this position from the firm accounts and I think what he is saying is that isn't happening and it's not relevant to the fails.

Q. So when you are using the phrase "conversion," am I correct to say that in the conversion context all the accounts would go over including every aspect of the clearance boxes?

A. No. Sorry, carry on. I apologize for interrupting.

Q. I am trying to understand. Previously you had talked about finding unencumbered assets in the clearing boxes; correct?

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A. Yes.

Q. Is that not the case in a conversion? Does the entire clearing box go over?

A. These are two different things. This is two different exercises completely. This is about a way a deal potentially may have been -- having been conceived up to a point in time and something completely different afterwards, so it's comparing apples with oranges.

Q. So is it correct to say the conversion effort started earlier in the week worked its way through different iterations up to some point in time and then was abandoned?

A. And then abandoned on the Friday at 5 p.m. I think I called a meeting and told everyone the conversion -- all these people were working feverishly to try and create a -- to do certain things and to facilitate whatever we believed the transaction was. It was irrelevant.

Q. And then you shifted gears and I think you testified before that you then were

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tasked with getting yourself set up so you
could run your operations on behalf of Barclays
Capital as of Monday; is that right?

A. Or some form of that still to be determined with conversations with Barclays' operations staff, which I wasn't really able to have.

Q. Okay. That was going to be my next question. What did you, in fact, do with respect to that task?

A. A number of the people involved in what was perceived to be the original conversion then started to work on a plan to create our ADP stream, which is the back office clearance system, a new DTC clearance box linking up to Barclays' back office infrastructure, and we built a whole plethora of pieces of technology or replicated technologies. On -- I think it was on Sunday -- there was clarification over the weekend and at one point I asked a question is prime brokerage going to be live in the first week and it was agreed that that wasn't going to be the case. That was passed to me from TSG Reporting - Worldwide (877) 702-9580

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assets that were previously supposed to go to
Barclays that ended up being from LBIE and they
couldn't go?

A. I don't, but it's possible.

Q. You weren't involved?

A. I don't recall that.

MR. HINE: Do you want to take a break?

MR. SHAW: Sure.

(Recess was taken from 11:43 to 11:53.)

(Exhibit 66 B, e-mail dated

September 19, 2008, Bates stamped 10298186, marked for identification.)

BY MR. HINE:

Q. Mr. Blackwell, I am handing you a copy of a document marked as Exhibit 66 B, which is an e-mail stream dated Friday, the 19th of September, and you are listed as a recipient on the last of the e-mail stream.

I wanted to ask you if you have ever seen this e-mail before, if you recall seeing it.

A. What time is this? What time is the TSG Reporting - Worldwide (877) 702-9580

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Ian. And we continued to work through that process. On -- I think it was late on Sunday I was told -- or may have been Monday morning I was told that we wouldn't be trading for a week and so it became moot. So post bankruptcy we did a -- we had a combined plan, not a plan where Lehman employees try to figure out how they would be working at Barclays, but one where we were coming together as a group of people to determine exactly what we were doing, set goals and then deliver those goals, and that wasn't really done until -- I can't remember the meeting, but it was in the board room at 745.

Q. This was after the closing?

A. I believe so, yes. I can't -- we could clarify when it was.

Q. Do you have any recollection of any issues arising during this weekend period about assets that were, I guess, belonged to LBIE versus LBI?

A. I think there may have been some discussion. I don't recall it.

Q. You don't recall any problems with

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original flow here? Is that the accurate time?

Q. I don't know.

A. Is that middle of the day, middle of the night? I can't tell. Where Paolo says "got it."

Q. Well, here is my question: The part of the e-mail stream that you were referring to is an e-mail from David Aranow to Paolo Tonucci which says, and let me just read it: "Barclays' operations team has recalculated the value of the collateral that they received from us last night and they are more than fully collateralized including the haircuts applied. Senior management at Barclays, I am told, are very satisfied with the results of the effort." And then it goes on.

Do you recall any discussions about this issue on that Friday?

A. No.

MR. SHAW: Objection to form.

Q. Am I understanding your prior testimony correctly that not all the collateral got transferred to Barclays that they expected on Thursday night?

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2 A. I don't know what this is referring
3 to precisely.

4 **Q. Okay.**

5 A. So I can't comment on this e-mail.
6 I'm on the e-mail trail. There is -- the
7 commercial components are -- you have John
8 Wickham, John Feraca and John Coghlan on here
9 that are the people that would have an opinion,
10 and same with Paolo. I don't know what this is
11 referring to.

12 **Q. Do you recall any debate or**
13 **discussion on either Thursday night or Friday**
14 **of that week about whether the collateral had,**
15 **in fact, all been transferred to Barclays under**
16 **the repo?**

17 A. There was a mechanism put in place
18 to move collateral, so there was debate and
19 discussion about what was moving in terms of
20 the mechanism. Had a lot of conversation about
21 the mechanism. So that's where the focus,
22 again, from an operations standpoint had, and
23 what moved was reconciled. So I think that's
24 understood what physically moved. I don't know
25 what this is referring to. I don't know what

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2 the value is, so I don't have a -- don't really
3 have any opinion on this.

4 **Q. Okay. I understand your testimony.**
5 **I just want to make sure I got it all.**

6 **Where it says "fully collateralized**
7 **including the haircuts," do you have any**
8 **understanding what haircuts they are talking**
9 **about there?**

10 A. I don't know what Barclays would
11 have applied.

12 **Q. And I take it also you don't**
13 **understand what the phrase "fully**
14 **collateralized" in this context is?**

15 A. I don't know exactly. I think this
16 is -- yes.

17 MR. HINE: That's fine.

18 Let's mark this.

19 (Exhibit 67 B, e-mail dated
20 9-18-2008, marked for identification.)

21 **Q. Mr. Blackwell I am handing you a**
22 **document marked as Exhibit 67 B, which is an**
23 **e-mail dated September 18th apparently late in**
24 **the evening between Mr. Hraska and yourself,**
25 **and there is other aspects of the e-mail, but**

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2 **my question to you relates to the middle e-mail**
3 **in this stream in which Mr. Hraska writes**
4 **"without margin we are 1.5 billion short. With**
5 **margin, we owe them 7 billion." Do you see**
6 **that?**

7 A. Yes, I do.

8 **Q. I think I understand your prior**
9 **testimony as to the last document, but do you**
10 **have an understanding what this is talking**
11 **about?**

12 A. I think this is discussing a
13 shortfall. Most of my conversations with Jim
14 were face to face, because he was down the
15 hallway, but it looks like there was a
16 shortfall in terms of what was actually
17 delivered, as I understood it, and that he was
18 attempting to arrange a loan against the Chase
19 depo positions and pledge cash. Whether that
20 was successful or not, I --

21 **Q. Just so I understand that, you mean**
22 **he was attempting to affect a loan from Chase**
23 **and then the cash would then be transferred to**
24 **Barclays to make up for the shortfall?**

25 A. Would fill the repo. I think that's

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2 what he was saying here. He would be the
3 person who could describe this precisely, but
4 that would be my interpretation.

5 **Q. And do you have an understanding**
6 **that there was a \$7 billion shortfall in the**
7 **repo or do you --**

8 A. That -- I have a recollection of
9 that kind of number, but, again, I wouldn't be
10 able to talk as eloquently as Mr. Hraska would.

11 **Q. I just want to see what you recall.**
12 **Do you recall that that 7 billion --**

13 A. It sounds familiar.

14 **Q. -- shortfall was ever satisfied?**

15 A. I don't.

16 **Q. Can you explain to me your**
17 **understanding of why there is a \$7 billion**
18 **shortfall when there is with margin and then it**
19 **says without margin a smaller shortfall? Do**
20 **you know what that means?**

21 A. These would be the commercial terms
22 of a repo. So a margin -- you have to deliver
23 a higher value which is margin, so I think you
24 need to -- you would have to ask Jim what
25 exactly this meant or, indeed, the front office

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2 as to the terms that were agreed.

3 **Q. Okay. So you don't have any**
4 **independent recollection --**

5 A. No.

6 **Q. -- of what that issue is?**

7 A. No, I don't.

8 (Exhibit 68 B, e-mail dated
9 9-20-2008, marked for identification.)

10 **Q. Mr. Blackwell, I am handing you a**
11 **copy of an exhibit marked 68 B, which is an**
12 **e-mail stream dated September 20th apparently**
13 **from a great part of your life and I just**
14 **wanted to have you take a look at it and see if**
15 **you recall this e-mail stream.**

16 (Document review.)

17 A. I recall this.

18 **Q. Could you tell me what was making**
19 **your life a living hell at that time?**

20 A. Just trying to do my job, frankly.
21 That was it. It was just the volume of
22 information and data I was being asked to
23 provide. The environment I was working in was
24 very, very difficult. It wasn't an environment
25 where we had perfect information. So there was
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2 a lot of uncertainty in terms of the data that
3 we were trying to gather and we weren't
4 operating in normal course of business, so
5 being put under enormous pressure to generate
6 data from a substandard environment which
7 wasn't designed to create the data. The way we
8 were having to extract it at that point in time
9 was incredibly, incredibly challenging, and so
10 that was the living hell.

11 **Q. Okay. But when you say "data," what**
12 **data are you referring to?**

13 A. All of the work streams that are in
14 my e-mail that I was being asked to work on, so
15 all contribute.

16 **Q. Was it a particular -- was this just**
17 **venting about the general situation or was it a**
18 **particular task that you were being asked that**
19 **you were particularly mad about or stressed**
20 **about at that point?**

21 A. No, I don't really recall exactly.
22 John Dorogoff used to run the investment
23 management division for me and was off at
24 Neuberger, so he wasn't part of whatever deal
25 was going on, he was dealing with a separate
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2 set of issues, so I have -- I was being
3 challenged. I think the reference to being
4 offended was I think Rich Ricci was unhappy
5 that -- I think I showed him something and it
6 wasn't the same as something else that somebody
7 else had shown him which was very similar, or I
8 had been in the room when something was shown
9 to him and that was in 745 and I don't know
10 what data it refers to, frankly, but I know
11 that he wasn't -- he had seen a similar piece
12 of information that was different, so, again,
13 it's around having to try and do a work to the
14 standard that I am used to doing in my daily
15 life under incredibly difficult circumstances,
16 which hopefully not many people have to live
17 through, and trying to perform to the standard
18 I want to as a professional. And that was the
19 challenge.

20 **Q. Well, can you -- at the bottom of**
21 **this first page you write something about "if I**
22 **can't figure out what assets are in and out of**
23 **the deal, the deal can't close."**

24 **Is that -- I am just trying to**
25 **understand what assets you are probably**

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2 **referring to there.**

3 A. I don't know.

4 **Q. You don't know?**

5 A. I don't know. I mean, I could
6 speculate, but it's not meaningful.

7 **Q. Okay. Is this during the period**
8 **when you are trying to locate the unencumbered**
9 **assets that we talked about earlier?**

10 A. What date is this? This is the
11 20th. It's possible. It's possible. I was
12 doing lots of things at that time. I was also
13 trying to figure out -- yes, I was doing many,
14 many, many different things, you can see that,
15 so it could be a reference to anything. It's
16 more of a reference to my state of mind than it
17 is to individual task I am carrying out.

18 **Q. Above that you talk about a**
19 **conversation with Bob Diamond's number 2. Who**
20 **is that?**

21 A. Rich Ricci.

22 **Q. Okay. So that's what you were**
23 **talking about before when you said he would**
24 **have been offended?**

25 A. Yes.

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2 **Q. Do you recall anything else about**
3 **that conversation?**

4 A. No, not really apart from -- I
5 really don't -- I don't even know what I was
6 talking about, to be honest. I don't know what
7 the subject of the conversation was about, but
8 it was some piece of data that I handed over
9 and -- or something of that nature. I really
10 can't recall.

11 **Q. At the very top you talk about what**
12 **they bought. Do you see that phrase?**

13 A. Yes. I didn't know.

14 **Q. You didn't know what they bought?**

15 A. No.

16 **Q. My question was is there push-back**
17 **from Barclays during this period of time about**
18 **the assets that they thought they bought but**
19 **they are not getting?**

20 MR. SHAW: Objection to form.

21 A. I wasn't having conversations with
22 Barclays about what assets. I was doing my
23 task. I didn't know what the deal was, so I
24 don't know. In terms of data that was being
25 shared, I was sharing information with my

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2 management and attending in meetings at 745
3 with people and that was happening constantly
4 24 hours a day pretty much, so I don't recall
5 what it's specifically referring to.

6 **Q. Okay. I understand you weren't in**
7 **conversations with Barclays, but do you recall**
8 **any just general scuttlebutt or your general**
9 **understanding about Barclays pushing back as to**
10 **the assets they thought they were buying?**

11 A. The only thing I recall was the
12 clearance boxes and there are obviously assets
13 that fall under the Fed repo, but that was
14 before this point, fall under the Fed repo that
15 would not be eligible as collateral to be
16 delivered to -- as part of a regular repo,
17 because the Fed takes lower-quality assets, but
18 that's standard commercial terms.

19 **Q. The Fed takes lower-quality assets**
20 **than a repo between private parties?**

21 A. Yes.

22 **Q. That's pretty standard?**

23 A. The PDCF was created to create
24 liquidity for that very purpose, to allow
25 poorer quality assets to be lent so that it

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2 would create liquidity in the market.

3 **Q. And does the Fed get a bigger**
4 **haircut or discount as to the collateral that's**
5 **posted for those?**

6 A. I'm not sure.

7 **Q. You are not sure?**

8 A. I'm not sure.

9 (Exhibit 69 B, e-mail dated
10 September 19, 2008, Bates stamped 93219,
11 marked for identification.)

12 **Q. Mr. Blackwell, I am handing you a**
13 **document which is marked as 69 B which is an**
14 **e-mail stream taking place on Friday the 19th.**
15 **You are involved in this stream.**

16 My question has to do with the part
17 of it that's on the second page. Please take
18 your time to look at it.

19 (Document review.)

20 A. Okay.

21 **Q. In that e-mail -- have you had a**
22 **chance to review the document?**

23 A. Yes.

24 **Q. In the e-mail that I am referring**
25 **to, which is between Mr. John Palchynsky and**

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2 **Mr. Hraska and others, CC'd to you on the 19th**
3 **at 3:57 p.m., he discusses seven -- "as per**
4 **Barclays' request, 7 billion cash was allocated**
5 **to their lock-up last night. If securities**
6 **were/can be used instead, that would free up**
7 **margin collateral by reducing the amount of**
8 **higher haircut securities allocated to the JP**
9 **Chase Bank loan."**

10 **Could you explain to me what that**
11 **means, if you understand it?**

12 MR. SHAW: Objection. Foundation.

13 A. The technical experts would be
14 better to explain this to you. I think that
15 would be -- I can make an attempt to explain it
16 to you, but I think --

17 **Q. Do you have an understanding of what**
18 **it means? I understand you are not the**
19 **technical expert.**

20 A. Just almost literally that 7 billion
21 of cash, collateral, the loan I think was
22 referred to earlier where securities were
23 pledged to Chase as a loan and 7 billion of
24 cash was pledged to Barclays. That 7 billion.
25 And I think John is referring -- John

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2 Palchynsky is referring to different commercial
3 terms dependent on the quality of collateral.
4 What he is referring to in that last sentence
5 in terms of the JPMorgan Chase situation, I
6 don't know what he is referring to precisely
7 there, so I'd rather not speculate, but, again,
8 the middle part of that paragraph he is just
9 referring to substitution or changes based on
10 collateral quality, as far as I understand,
11 which would give you different commercial --

12 **Q. Higher haircut securities are lower**
13 **quality?**

14 A. I believe so, but you have to ask
15 them for confirmation.

16 **Q. Do you have any recollection of the**
17 **discussion discussing this with your folks?**

18 A. No. No. This wasn't an environment
19 where we were having lots of discussion.

20 **Q. Are you copied simply because you**
21 **are in the chain of command?**

22 A. Yes.

23 **Q. You are not the guy on the ground**
24 **doing this type of deal?**

25 A. No. I had 2 and a half thousand
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2 people working for me. I didn't do this kind
3 of detail.

4 (Exhibit 70 B, e-mail dated May 29,
5 2009, Bates stamped 10296524, marked for
6 identification.)

7 **Q. Mr. Blackwell, I am handing you a**
8 **copy of a document marked as Exhibit 70. It's**
9 **an e-mail on Friday, September 19th, from Neal**
10 **Ullman to several people -- two people**
11 **including yourself titled "did you hear that**
12 **this is on hold." Do you recall this e-mail?**

13 A. Yes. It's in relation to the Kathy
14 Bopp Flynn, who is the originator of this
15 e-mail, was referring -- was sending a note to
16 Neal around the conversion work. Again,
17 thinking, this is Friday, that we are all
18 working towards a conversion. That conversion
19 is now stopping. It's on hold. And Neal is
20 speculating again that the assets have gone as
21 part of a repo. I have no idea why he thought
22 that or otherwise. I don't know.

23 **Q. Do you recall any discussion at all**
24 **about being out-smarted because the assets are**
25 **now in their possession due to the repo?**

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2 A. I think there was speculation
3 amongst a lot of people as to what was
4 happening. We didn't know at that point. So
5 again, this may be Neal's theory at that time.

6 **Q. Okay. But your recollection of the**
7 **phrase "did you hear that this is on hold" is a**
8 **reference to the conversion effort?**

9 A. Absolutely. And that was Kathy's
10 role, as I think she was responsible for -- she
11 was head of audit at the time, so, again, a
12 process role.

13 (Exhibit 71 B, e-mail dated
14 September 19, 2008, Bates stamped 138587,
15 marked for identification.)

16 **Q. Mr. Blackwell, I am handing you an**
17 **exhibit marked 71 B, which is an e-mail from**
18 **yourself to Paolo Tonucci on Friday the 19th.**

19 A. Right.

20 **Q. First of all, do you recall this**
21 **e-mail?**

22 A. I don't recall the e-mail, but I
23 understand it.

24 **Q. Could you explain to me what you are**
25 **discussing here with Mr. Tonucci?**

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2 A. I am asking him -- again, I thought
3 I was doing a conversion, so I had -- I was
4 asking him the question that as a repo going
5 into default the conversion, have we converted,
6 that's it, because the conversion -- I then
7 actually went to Ian's office and met Paolo and
8 that's when I was told at I think 5 p.m. that
9 day there isn't a conversion. So I am
10 speculating is that what's happened. I didn't
11 know. Been working towards a conversion and we
12 had been working hard to process a repo trade
13 and that's the question I am asking. So I went
14 into Ian's office and was told that there
15 wasn't a conversion and all of the things that
16 I have told you previously.

17 **Q. Okay. And when you say "putting the**
18 **repo into default is my conversion," what does**
19 **that mean? What does putting the repo into**
20 **default mean?**

21 A. The financing trade, by Lehman going
22 bankrupt, my understanding would be that repo
23 is going to default.

24 **Q. You mean LBI going bankrupt?**

25 A. Yes.

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2 **Q. So you are --**

3 A. I'm sorry, go ahead.

4 **Q. I am just trying to understand what**
5 **you are talking about.**

6 **Is it your understanding at that**
7 **time that if LBI goes bankrupt, the repo goes**
8 **into default?**

9 A. That's standard terms.

10 **Q. Okay. And --**

11 A. If the counterparty puts you in
12 default, ultimately.

13 **Q. Do you recall any discussions about**
14 **the repo going into default?**

15 A. Absolutely not at this point.

16 **Q. Did you have any water cooler**
17 **conversation or any speculation about whether**
18 **the repo would go into default at the time?**

19 A. Not that I recall, no. No.

20 **Q. Did anyone ever discuss with you the**
21 **possibility that if the repo went in default,**
22 **those assets would be left with Barclays?**

23 A. It's possible. Again, I don't
24 recall a specific conversation of that nature.

25 **Q. Do you recall any conversations with**
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2 **anyone about a possible default under the repo?**

3 A. I don't remember specific
4 conversations, no, on that.

5 **Q. Do you have any general**
6 **recollections that it was a topic of**
7 **discussion?**

8 A. I think it was a topic of
9 speculation.

10 **Q. Did you raise that topic when you**
11 **met with Mr. Tonucci or Mr. Lowitt?**

12 A. I was asked -- I was told -- I went
13 to the room. There was a conversation already
14 under way. I can't remember who exactly was in
15 the room, but I was told that there wasn't a
16 conversion, and so I asked what's next, and so
17 that's when I got my -- I started to get the
18 marching orders for the following week, so that
19 was really the bulk of that conversation. Now,
20 I think I was in a cab potentially on my way
21 back into the office or just got back into the
22 office at this point from being up all night.
23 I had just gone home to shower and come back
24 again, so I was kind of in the process of being
25 in transit to an office.

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2 **Q. But when you did go in and met with**
3 **Mr. Tonucci and Mr. Lowitt, was anyone else in**
4 **the office?**

5 A. Yes, there were. I can't remember
6 who it was. It was some combination of Gerry
7 Reilly, Martin Kelly, potentially, and there
8 may have been other people as well, but it
9 wasn't -- there weren't any more than that, I
10 don't think.

11 **Q. Did you hear the notion of a repo**
12 **default mentioned at all in that meeting?**

13 A. I don't recall that. I don't think
14 so.

15 **Q. Do you recall anything about a**
16 **default being discussed in that meeting?**

17 A. No, I don't recall anything being
18 discussed in that meeting in terms of a
19 default. The conversation had moved on by the
20 time I had got into the room to here, my
21 conversation.

22 (Exhibit 72 B, e-mail dated
23 9-20-2008, marked for identification.)

24 **Q. Mr. Blackwell, I am handing you a**
25 **copy of an exhibit marked 72 B, which is an**

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2 **e-mail stream on September 20th between**
3 **Mr. Hraska, Mr. Tonucci and you are CC'd.**

4 **My question is do you recall that**
5 **e-mail discussion?**

6 **(Document review.)**

7 A. I have read the mail.

8 **Q. Do you see in the first paragraph on**
9 **the page it discusses Barclays closing the repo**
10 **under default. Do you see that phrase?**

11 A. I do, yes.

12 **Q. Does this ring a bell with you or do**
13 **you recall any discussions on repo default?**

14 A. In terms of timing, this starts to
15 ring a bell. It wasn't a Friday conversation I
16 was having. So I think Jim is saying that in
17 order to protect the pledge positions of the
18 securities that are being pledged, they would
19 need to carry out a certain process, put the
20 repo in default, Barclays would have to put the
21 repo in default.

22 **Q. Can you explain to me what you mean**
23 **by "in order to protect the pledge positions"?**

24 A. Well, if you have placed cash with a
25 counterparty and you have securities as

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2 collateral, if you put a repo into default,
3 keep the securities and the cash stays with the
4 counterparty, and that's a standard term of a
5 repo agreement.

6 **Q. Is it standard to keep excess
7 collateral?**

8 A. I don't know.

9 **Q. And so what is -- do you recall
10 any -- this exchange between Mr. Hraska and
11 Mr. Tonucci?**

12 A. I received a lot of e-mails. I saw
13 it at the time, so I'm sure -- I don't have --
14 it doesn't stick out in my memory as something
15 particularly.

16 **Q. Do you recall -- I guess ultimately
17 the repo was not put into default; correct?**

18 MR. SHAW: Objection.

19 A. Actually, I'm not a hundred percent
20 sure of the fact pattern what happened around
21 the repo in terms of its legal standing.

22 **Q. Okay. Do you ever recall hearing
23 that it was put in default?**

24 A. In terms of how it was -- no, not in
25 terms of -- it may have been used as a

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2 shorthand for recording it. Not in a legal
3 sense. More about how we were recording --
4 trying to capture things on the books and
5 records of Lehman Brothers post bankruptcy.

6 **Q. Can you explain what you mean by
7 that?**

8 A. Just cleaning up the books to try
9 and reflect real-world activity, which has been
10 something that continues to today.

11 **Q. So on the books now it's reflected
12 as a default?**

13 MR. SHAW: Objection to form.

14 A. I would need to look at it exactly
15 how it's been recorded, but it's been recorded
16 how Hughes Hubbard and their professionals
17 wanted it recorded.

18 **Q. You don't recall how it's recorded?**

19 A. No, not at this point, no.

20 **Q. Do you recall any discussion about
21 the possibility of defaulting the repo as it
22 relates to the Clarification Letter?**

23 A. No, not -- no.

24 **Q. We talked about the Clarification
25 Letter earlier.**

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2 **Do you recall any discussion about**
3 **the modifications to the transaction that were**
4 **embodied in the Clarification Letter being used**
5 **instead of defaulting the repo?**

6 A. No. I wasn't party to the
7 Clarification Letter.

8 (Exhibit 73 B, e-mail dated
9 September 20, 2008, Bates stamped 10222586,
10 marked for identification.)

11 **Q. Mr. Blackwell, I am handing you a**
12 **copy of an exhibit marked 73 B, which is an**
13 **e-mail between yourself and Bart McDade on**
14 **Saturday the 20th.**

15 **My question to you is do you recall**
16 **your exchange with Mr. McDade on this day and**
17 **what the topic was?**

18 A. I recall conversations with Bart. I
19 don't know exactly what Bart is referring to
20 here. The conversations I was having with Bart
21 focused on the fails, those fails conversation
22 previously, so I can't -- I don't actually -- I
23 know there are other e-mails between myself and
24 Bart and that's what I recall. I don't know
25 exactly what we were talking about here. I

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2 don't know.

3 **Q. You don't recall?**

4 A. No.

5 **Q. Did you ever set up an account to**
6 **capture Barclays' dough and send securities to**
7 **them?**

8 A. On Saturday?

9 **Q. At any time.**

10 A. No. No. I mean, we had a repo
11 agreement and so on and so forth, but not this.

12 **Q. This is not ringing any bells at**
13 **all?**

14 A. No, not -- the actions I took
15 immediately after this would probably be
16 helpful.

17 **Q. What I am trying to figure out, was**
18 **there any discussions of alternative types of**
19 **transactions instead of defaulting the repo or**
20 **any other alternative, were you a party to any**
21 **discussion where alternative transactions were**
22 **discussed?**

23 MR. SHAW: Objection to form.

24 A. No, I wasn't party to any
25 discussions in terms of -- I had my marching

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2 orders for that weekend, which are 15C3 and the
3 unencumbered securities in the clearance boxes.

4 **Q. Can you tell me what you recall of**
5 **the 15C3 securities you just mentioned?**

6 MR. SHAW: Is this a logical time to
7 take our lunch break?

8 MR. HINE: Yes. Do you want to
9 break for lunch? Okay. Sounds good.
10 (Lunch recess was taken at 12:30.)
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2 (Time noted: 1:14.)
3 A L A S T A I R B L A C K W E L L,
4 resumed as a witness, was examined and
5 testified as follows:

6 CONTINUED EXAMINATION BY
7 MR. HINE:

8 **Q. Good afternoon, Mr. Blackwell.**

9 A. Good afternoon.

10 **Q. Hope you had a good lunch. We have**
11 **some more talking to do here, unfortunately for**
12 **you. I think we had left off with -- we had**
13 **mentioned 15C3.**

14 **Could you just explain to me what**
15 **you were doing over that weekend as far as**
16 **trying to locate assets in 15C3 accounts? And**
17 **I meant the weekend of the 20th, 21st.**

18 A. I wasn't trying to locate assets in
19 15C3.

20 **Q. Okay. What were you trying to do**
21 **with respect to 15C3 accounts?**

22 A. It isn't an account. It's not an
23 account. It's a calculation that historically
24 was run once a week and is designed for
25 customer protection. It's a regulatory

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2 requirement you run this calculation and what I
3 was doing was trying -- working in conjunction
4 with the people that were responsible for
5 producing that, which is the finance
6 organization, was to rerun a calculation.

7 **Q. And why did it need to be rerun?**

8 A. To come up with -- I was asked to
9 come up with what is the number, what is the
10 sum, basically, run the calculation and come up
11 with a number. That is the 15C3 calculation.

12 **Q. Okay. And then what was to be done**
13 **with that calculation once you did it?**

14 A. Provide it to the -- my supervisors
15 and for them to have an understanding of what
16 that number was.

17 **Q. Did you have any understanding of**
18 **how that calculation related to the transaction**
19 **that was going on between Barclays and Lehman?**

20 A. In terms of -- running the
21 calculation was to find out whether -- what the
22 calculation was, come up with a number.

23 **Q. And did you have any understanding**
24 **of what your superiors were going to do with**
25 **that number once you gave it to them?**

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2 A. Compare that to what was locked up
3 as cash to -- cash and securities to protect
4 customers.

5 **Q. And am I correct if that calculation**
6 **yielded a number that was lower than what was**
7 **previously locked up, that would release some**
8 **assets to Barclays; is that right?**

9 MR. SHAW: Objection. Foundation.

10 A. It would mean there is an excess.
11 It would mean there is an excess of cash locked
12 up or securities locked up as part of customer
13 protection.

14 **Q. And why were they trying to find out**
15 **whether there was an excess?**

16 MR. SHAW: Objection. Foundation.

17 A. I was asked to go recalculate the
18 numbers, so I worked with the finance people
19 who own the calculation as a whole, operations
20 are an input to some of the lines in the
21 calculation and we work towards creating that.

22 **Q. And who at finance are charged with**
23 **doing this calculation?**

24 A. At the time, Tony Stucchio, Anthony
25 Stucchio, who reported to Martin Kelly.

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2 (Exhibit 74 B, e-mail dated
3 9-20-2008, marked for identification.)
4 **Q. Mr. Blackwell, I am handing you a**
5 **copy of a document marked as Exhibit 74 B,**
6 **which is an e-mail stream dated September 20th,**
7 **2008 involving yourself and several others**
8 **including Ian Lowitt and some of your people in**
9 **your group. I think I am mixing two concepts**
10 **here, so I just want to get some clarification**
11 **on what we have just been talking about after**
12 **you have had a chance to look at the e-mail.**
13 **(Document review.)**

14 A. Okay.

15 **Q. Have you had a chance to look at it?**

16 A. I have.

17 **Q. Could you tell me what you recall**
18 **about this discussion that's embodied in this**
19 **e-mail?**

20 A. It's just a -- it's a list of things
21 that we were working on. It's two things that
22 we were working on. Looking for the
23 unencumbered -- trying to define a list of
24 unencumbered assets, and what it's saying here
25 is that 15C3, if there is excess, and that

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1 Blackwell - Highly Confidential
2 potentially there is money that can be released
3 as an unencumbered asset of the firm.

4 **Q. I think I understand what you said.**
5 **I just want to make sure.**

6 **This is during a period of time when**
7 **your group is trying to locate unencumbered**
8 **assets which would then presumably be**
9 **transferred to Barclays for whatever purpose?**

10 A. Right.

11 MR. SHAW: Objection. Foundation.

12 **Q. And I see here mentioned the goal is**
13 **1.9 billion. Do you see that?**

14 A. Yes.

15 **Q. Who set that goal or where did that**
16 **goal come from?**

17 A. Ian is saying guys, we need 1.95
18 billion.

19 **Q. Okay. Ian is after the below**
20 **e-mail; right? The e-mails are from the bottom**
21 **up in sequence?**

22 A. Yes. It would have come from Ian or
23 Paolo.

24 **Q. Do you recall any discussions about**
25 **why we need 1.9 billion in unencumbered assets?**

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1 **Blackwell - Highly Confidential**
2 A. Again, people closer to the deal
3 were negotiating whatever they were
4 negotiating. I was being asked to carry out an
5 action. I have a goal. Find 1.9 billion of
6 unencumbered assets.
7 **Q. I just want to make sure, you were**
8 **not involved in the setting of that goal or --**
9 **am I correct to say you don't have any**
10 **knowledge of why that number was passed down to**
11 **you?**

12 A. I haven't -- no, I don't have
13 knowledge.

14 **Q. And now as I read this e-mail, the**
15 **bottom e-mail is Monty Forrest reporting on**
16 **some of the efforts to find unencumbered**
17 **assets; correct?**

18 A. Yes.

19 **Q. Okay. And as we get to the upper**
20 **e-mail, Ian says he really needs 1.95 billion;**
21 **is that right?**

22 A. Yes.

23 **Q. But I don't understand what he means**
24 **by a shortfall in the 15C3 lock-up release.**
25 **Can you explain that?**

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1 **Blackwell - Highly Confidential**
2 A. I don't know exactly -- the way I
3 would interpret this would be if he is looking
4 for -- if the target is to find 1.95 billion of
5 unencumbered securities, then -- if there is no
6 excess in the 15C3 or there is an excess, we
7 don't know at this point, because we haven't
8 rerun the calculation, then potentially finding
9 more unencumbered assets because you wouldn't
10 take -- if it is not an excess, you can't take
11 it, so it's a sum.
12 **Q. Is it correct to say he is asking**
13 **for a little more in the assets in case there**
14 **was no excess in 15C3, but actually there was a**
15 **shortfall --**

16 MR. SHAW: Objection. Foundation.

17 **Q. -- in 15C3? Is that right?**

18 A. No, I wouldn't interpret it like
19 that. I think he is saying find -- review --
20 we are not looking for assets that aren't
21 there. We are going through a process in a
22 very methodical way based on a set of -- an
23 understood approach which are under the rules
24 that we would apply to our depositions, to the boxes
25 of Lehman Brothers, to find unencumbered

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2 securities based on those rules to come up with
3 a list. The data that we had, because Chase
4 had failed to send files for a period of time,
5 was incredibly difficult to work with.
6 Broker/dealer systems aren't run -- aren't used
7 to running over a weekend, they work on a
8 five-day week normally, so trying to create
9 this data was difficult. So we are combing
10 through the data to create a list of
11 unencumbered assets. We are recalculating the
12 15C3 to see what the segregation -- what the
13 lock-up requirement would be, on a hypothesis
14 that as customer assets had left Lehman
15 Brothers, then the requirement for a lock-up
16 would be reduced, so that would create an
17 unencumbered asset. So we weren't looking for
18 things that weren't there. We were looking for
19 things that were there based on the
20 challenge -- very challenged and uncertain data
21 that we had.

22 **Q. I think I understood what you just**
23 **said, but did you mean that over the previous**
24 **week presumably customers had left Lehman and**
25 **that would reduce the requirement for the 15C3**

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1 **Blackwell - Highly Confidential**
2 **lock-up or reserve?**

3 A. That was a hypothesis.

4 **Q. And you were doing the calculation**
5 **to test that hypothesis?**

6 A. Yes.

7 **Q. Did it prove to be correct?**

8 A. I don't know what conclusion we
9 ultimately reached, because the data was so
10 challenging we didn't reach a conclusion that
11 weekend.

12 **Q. So do you know if there was an**
13 **excess in the end?**

14 A. I don't. I don't recall whether
15 there was an excess or not.

16 **Q. When you say the data was so -- what**
17 **data are you talking about?**

18 A. Stock record data. Books and
19 records of the firm are dependent on several
20 data feeds; trade data -- new trade data that
21 comes from the front office, external trade
22 data, so repo, for instance, coming from Chase,
23 these are all of the trades -- securities we
24 have pledged, I need that data, that needs to
25 be fed in, and then you carry out third

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2 world -- a third-party check of your depos
3 versus the outside world, so your custody
4 information. We had partial information around
5 repo coming back in and we had no visibility
6 over our depo at Chase, because they had
7 removed access to their systems, so we couldn't
8 operate in the normal course of business.

9 **Q. Depo means deposit?**

10 A. Depo means like a clearing box. I
11 would use that term interchangeably.

12 **Q. And why had Chase cut off this data**
13 **stream?**

14 A. As a result of the funding activity
15 that is taking place. I believe -- and this
16 is -- I didn't have a conversation with Chase,
17 but they rescinded access. I passed that
18 information on to Paolo and asked him to speak
19 to Chase, because -- he in the end called Chase
20 and they still would not give us access to the
21 systems.

22 **Q. Did they ever restore access to the**
23 **system?**

24 A. Not that I'm aware of.

25 **Q. Were you party to any of those**

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2 **conversations between Lehman and Chase about**
3 **this issue?**

4 A. No, I was not.

5 **Q. Do you have any understanding of why**
6 **they were restricting access to the system?**

7 A. I believe it's a dispute that they
8 had with Barclays around the financing trades
9 that were put on at that point.

10 **Q. Do you have any more detail in your**
11 **understanding than that?**

12 A. Just around -- just that.
13 (Exhibit 75 B, e-mail dated
14 9-20-2008, marked for identification.)

15 **Q. Mr. Blackwell, I am handing you a**
16 **document marked as Exhibit 75 B, which is a**
17 **similar e-mail stream to the one you previously**
18 **just looked at marked as sent on September**
19 **20th, 2008. It appears to me to be the same**
20 **e-mail stream, only the last entry is a little**
21 **different than previously. So my question has**
22 **to do with the first entry on page 1 after you**
23 **have had a chance to look at it.**

24 (Document review.)

25 A. Okay.

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2 **Q. Have you had a chance to look at it?**

3 A. I have.

4 **Q. In the first paragraph of this**
5 **e-mail it's mentioning an 8:00 call and it**
6 **appears to relay certain groups of assets and**
7 **eventually there is a line that says the total**
8 **is 2.181 billion. Do you see that?**

9 A. I do.

10 **Q. Are these the assets that your group**
11 **identified as unencumbered assets?**

12 MR. SHAW: Objection. Vague as to
13 time.

14 **Q. Do you have an understanding of what**
15 **this list of assets is?**

16 A. I understand what is trying to be
17 shown here, yes.

18 **Q. Could you tell me what it is?**

19 A. The team of people, so finance,
20 operations working through the process I
21 described to identify assets on the books and
22 records that were highlighted as inventory,
23 unencumbered inventory, this is the breakdown
24 by clearance boxes.

25 **Q. I think previously you testified**

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2 **that there was about \$2 billion in assets that**
3 **you ultimately identified.**

4 A. Which is consistent.

5 **Q. My question for you is do you**
6 **believe this is pretty close to the end result**
7 **of your effort to find unencumbered assets?**

8 A. This was a point in time. That work
9 continued. I can't emphasize enough how
10 challenging the system environments were.
11 Getting information was happening. We had
12 technology teams working through the night to
13 extract data from the systems in a non-standard
14 environment. This is not what we are designed
15 to do and when they were designed to do them,
16 and we weren't getting the third-party feeds we
17 needed to to give us the hundred percent
18 confidence on the data that we had. So there
19 is uncertainty here. So at that point in time
20 there was a call -- I'm not sure that I was
21 actually on that call. I think I was tied up
22 on another issue. But this was the result of
23 that night's work, the overnight work that was
24 done by the technology and operations and
25 finance to come up with that list.

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2 **Q. Okay. Do you know when that process**
3 **came to a conclusion?**

4 MR. SHAW: Objection. Assumes facts
5 not in evidence. Foundation.

6 MR. HINE: You can answer.

7 A. It continued. It continued. My
8 team continued working on this to try and
9 identify the unencumbered assets into the early
10 part of the following week.

11 **Q. So even after the closing it**
12 **continued?**

13 A. We didn't have access to data and
14 then we had virtually no access then, so it
15 just stopped. The work stopped.

16 **Q. When did it stop?**

17 A. I don't know precisely.

18 **Q. If you look at this list, there is**
19 **four different classes of assets.**

20 **Do you recall any other classes of**
21 **assets that were identified as being**
22 **unencumbered other than the four listed here?**

23 A. No. These were the main buckets. I
24 described these earlier as well.

25 **Q. Now, when it says "mortgages," do**

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2 **you see that on number 4? Do you recall any**
3 **discussions or -- any discussions over that**
4 **weekend about Barclays getting a greater**
5 **percentage of the mortgage-based assets than**
6 **was previously agreed to?**

7 A. No.

8 **Q. Is the term resi's used to describe**
9 **this type of asset, mortgage-based asset?**

10 A. Possibly. Without seeing the list
11 of securities, I would be speculating.

12 **Q. Am I correct to say that you were**
13 **not -- would have no knowledge of discussions**
14 **between Barclays and Lehman as to the**
15 **disposition of residential mortgage-based**
16 **assets?**

17 A. That's correct. I think there is
18 one point worth mentioning here. You can see
19 even here that Chase are taking assets, again,
20 so we don't know exactly what's in the real
21 world box. That's really showing you the
22 uncertainty of the data.

23 **Q. And you are pointing to something.**
24 **Can you just tell me which line you are**
25 **pointing to?**

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1 **Blackwell - Highly Confidential**
2 A. It's the second to last paragraph or
3 sentence in the "we are also looking" --
4 **Q. "To valuate how much JP Chase put a**
5 **lien on Friday by CUSIP"?**
6 A. Yes. We couldn't.
7 **Q. Just so I understand, you are trying**
8 **to figure out what assets Chase is holding in**
9 **the system and not releasing?**
10 A. What Chase has seized.
11 **Q. And did you ever figure the amount?**
12 A. That work, I believe, is still
13 ongoing in terms of what was being done.
14 (Exhibit 76 B, e-mail dated
15 September 21, 2008, Bates stamped 138124,
16 marked for identification.)
17 **Q. Mr. Blackwell, I am handing you a**
18 **copy of an exhibit marked as 76 B, which is an**
19 **e-mail dated September 21st, Sunday, from**
20 **yourself to Ian Lowitt, a copy to some others.**
21 **Take a minute to look at it, if you would.**
22 (Document review.)
23 **Q. Have you had a chance to look at it?**
24 A. I have, yes.
25 **Q. Do you recall what this e-mail is**
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2 **about or could you explain to me what it's**
3 **about?**
4 A. I can. This is in relation to
5 fails. What I had been asked to do was
6 determine what the fails were, and as I
7 previously stated around the quality of data,
8 the Lehman systems at that time hadn't consumed
9 the data from the third parties. The
10 third-party sources, in regular course of
11 business that you would have expected, would
12 give you a completely 100 percent accurate
13 statement of your real world positions. What I
14 was suggesting we could make available to
15 Barclays is give Barclays access to DTC -- give
16 DTC, the Depository Trust Company, authority to
17 allow Barclays to look at the depositions so that it
18 could see the fails for themselves, which would
19 be maybe an even more accurate reflection than
20 our books at that time, but that's on Sunday in
21 the night, I think, so I am just trying to help
22 solve the problem around the clearance box.
23 **Q. And was your suggestion acted on?**
24 A. I think it was after the event -- I
25 think -- at some point -- I don't think
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2 actually as it relates to DTC that happened,
3 actually. I don't think that ever happened.
4 **Q. I think previously you discussed**
5 **fails, you said you thought it had been put to**
6 **bed and then it came back for you on Sunday.**
7 A. This is it coming back.
8 **Q. And do you recall your**
9 **conversations -- or did you have a conversation**
10 **with Bart McDade about this issue at this time?**
11 A. Not then. It was third party.
12 **Q. So you don't know if, in fact,**
13 **Barclays was granted access to the DTC so they**
14 **could look at the fails themselves?**
15 A. I don't know. I don't know. That
16 was only a suggestion.
17 **Q. Would someone else in your**
18 **department know that?**
19 A. Unlikely.
20 **Q. Would someone else at Lehman know**
21 **that?**
22 A. If it was granted, it would be in my
23 e-mail, because I probably would have had to
24 grant it.
25 (Exhibit 77 B, e-mail dated
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1 Blackwell - Highly Confidential
2 September 21, 2008, Bates stamped 459680,
3 marked for identification.)
4 **Q. Mr. Blackwell, I am handing you a**
5 **copy of Exhibit 77 B, which is an e-mail dated**
6 **September 21st, 2008 on which you are one of**
7 **the recipients and the subject of the e-mail is**
8 **17.9 billion, 9:15 p.m. update.**
9 (Document review.)
10 **Q. Have you had a chance to look at the**
11 **document?**
12 A. I have, yes.
13 **Q. My question really has to do with if**
14 **you see on the first line, it says: "Monty,**
15 **you and Alastair need to be at that 7 a.m.**
16 **meeting."**
17 **My question is do you recall having**
18 **a meeting 7 a.m. on Monday morning?**
19 A. Is it Monday or Sunday?
20 **Q. That's what I am trying to figure**
21 **out.**
22 A. No, I don't think it was a Monday
23 morning meeting.
24 **Q. It was a Sunday meeting?**
25 A. What time is that? I can't tell
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2 from here. Is it a 7 p.m. or 7 a.m. meeting?
3 It's a 7 a.m. meeting. I possibly was, but I
4 don't recall the meeting. Yeah, I don't recall
5 that meeting specifically. It would probably
6 be in my diary if I was there. I don't know.

7 **Q. I think I might have misled you as**
8 **to the day. If you read this correctly, this**
9 **is sent at Sunday, 2 a.m., Greenwich meantime,**
10 **so that would be Saturday night here, correct,**
11 **so that the suggestion, as I read this, would**
12 **mean that it's suggesting a Sunday morning**
13 **meeting; do you recall?**

14 A. That makes more sense, yes.

15 **Q. Does that ring a bell then about a**
16 **meeting?**

17 A. There was a meeting. I don't think
18 I was in that meeting. Monty took -- was in
19 that meeting, if there was one. I don't know
20 if it actually took place, but effectively this
21 is just a continuation of the process of
22 creating a list, which is -- looking at the
23 list by itself is pretty meaningless. It's a
24 list of CUSIPs with the price next to it.

25 **Q. So you don't recall being at that**
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1 **Blackwell - Highly Confidential**
2 **meeting?**

3 A. I don't recall being at that
4 meeting. I certainly was discussing this topic
5 constantly.

6 (Exhibit 78 B, e-mail dated
7 September 21, 2008, Bates stamped 10252597,
8 marked for identification.)

9 **Q. Mr. Blackwell, I am handing you a**
10 **copy of Exhibit 78 B, which is an e-mail dated**
11 **Sunday, September 21st, and the title -- the**
12 **topic is update 15C3-3.**

13 **My question to you has to do with**
14 **the first line where you write: "This won't be**
15 **perfect. Perfect is Tony taking that**
16 **approach."**

17 **My question is what were you talking**
18 **about when you said "this won't be perfect"?**

19 A. The systems and the data were
20 imperfect, so that was my --

21 **Q. So are you referring to the**
22 **calculation of the 15C3 number that we**
23 **previously discussed?**

24 A. I'm referring to the inputs. The
25 calculation should be correct, because it's a
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2 standard calculation. Some of the inputs into
3 that calculation are being produced in a
4 non-standard way to the best of everyone's
5 ability at that point in time. So that is my
6 point. It's not going to be a perfect
7 calculation. I think the last calculation was
8 done on the 17th.

9 **Q. So it's not going to be perfect**
10 **because the inputs are not perfect?**

11 A. Yes. Not because we were changing
12 the way you do the calculation. The
13 calculation was done the same way as it had
14 been done for twenty-odd years.

15 (Exhibit 79 B, e-mail dated
16 9-21-2008, marked for identification.)

17 **Q. Mr. Blackwell, I am handing you a**
18 **copy of Exhibit 79 B, which is an e-mail dated**
19 **September 21st, 2008 from yourself to Ian**
20 **Lowitt.**

21 A. Yes.

22 **Q. Have you had a chance to look at it?**
23 **Can you tell me what you are talking about in**
24 **this e-mail? Because it's entitled "they are**
25 **talking about tri-party fail," so I just want**

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1 **Blackwell - Highly Confidential**
2 **to see if you recall what this e-mail is**
3 **discussing.**

4 A. Yes. I was in a room at Weil. Ian
5 and Paolo were outside of it and I think from a
6 Lehman perspective Bart, myself, those are the
7 people I remember. There were representatives
8 from the Fed, from Chase, from Barclays, from
9 most of the regulators in the room, and this is
10 where discussions, I think, started around the
11 clearance box. I think Chase made -- this is
12 my recollection, so it may be imperfect. Chase
13 made reference to the fact that there was a
14 repo for 15.8 billion, what was called the HIC
15 loan, so held in custody repo, which was a loan
16 that they wanted to assign to Barclays, which
17 Barclays wouldn't take at that time, because
18 they hadn't authorized the trade, which would
19 appear reasonable. I wasn't the expert on
20 this. And what I was actually doing was trying
21 to get -- and what you will see is an e-mail to
22 Bart from me at this same meeting saying we
23 need Paolo in here and Paolo came into the room
24 and I left, I think, at that point, and so
25 that's what it relates to.

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2 **Q. So the 15.8 repo that's mentioned in**
3 **your e-mail is the HIC loan that you just**
4 **talked about?**
5 A. Yes.
6 **Q. And "Chase want to liquidate," the**
7 **phrase you use there, that's meant to --**
8 A. I think that meeting is probably
9 documented, because I think Hughes Hubbard were
10 present at the time as well and Weil, so I
11 can -- there is a lot of information around
12 that meeting.
13 **Q. Do you recall anything else about**
14 **that meeting?**
15 A. It was -- yeah, there was -- it was
16 a discussion around the repo transactions,
17 Barclays' and Chase's position at that point.
18 **Q. Okay. Do you recall anything other**
19 **than what you just told us?**
20 A. That was -- I believe that was the
21 main thrust. Rich Ricci at the time also
22 stated that we weren't taking responsibility
23 for the clearance boxes and that's when I think
24 the meeting broke up, pretty much broke up, or
25 was about to break up, but I think I left the
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2 room.
3 **Q. Do you have any knowledge of how**
4 **this issue was resolved ultimately, if at all?**
5 A. No. Not the 15.8, no.
6 **Q. Did you have any other follow-on**
7 **interaction with this 15.8 issue?**
8 A. No. Just one of the repos that were
9 on.
10 (Exhibit 80 B, e-mail dated
11 September 22, 2008, Bates stamped 464767,
12 marked for identification.)
13 **Q. Mr. Blackwell, I am handing you a**
14 **copy of Exhibit 80 B, which is an e-mail stream**
15 **dated September 22nd, 2008 in which you are**
16 **involved, and after you have had a chance to**
17 **look at it, I have a quick question about it.**
18 (Document review.)
19 A. Okay.
20 **Q. Do you see on the second page where**
21 **it says -- an e-mail from Mr. Scagnelli where**
22 **he says "DTC has a free pledge chill on 636,"**
23 **do you see that?**
24 A. Yes.
25 **Q. Can you explain to me what that**
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2 **means, if you know?**
3 A. I would interpret that as meaning
4 that DTC has locked everyone out of the system,
5 that they are controlling the clearance box at
6 this point. They are not taking direction.
7 **Q. Okay. And that --**
8 A. That means we couldn't do anything.
9 **Q. Okay. And later on I see your**
10 **e-mail which says "we need to get to DTC PDQ."**
11 A. Yes.
12 **Q. Do you recall what -- did you, in**
13 **fact, get to the DTC?**
14 A. Yes. They didn't release anything.
15 DTC -- I don't think I actually spoke to them.
16 I don't believe we were in a position to be
17 able to -- we weren't controlling the box. It
18 was in the hands of the trustee.
19 **Q. Okay. And so was there a meeting**
20 **about this or do you have any knowledge of what**
21 **happened after this?**
22 A. No. We didn't -- we ceased to have
23 any ability to impact the books and records of
24 LBI. That's my recollection. And this was
25 just, again, another part of the data issues
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2 that we were experiencing and probably close to
3 the end.
4 **Q. Can you describe for me what your**
5 **role has been with respect to these assets,**
6 **these unencumbered assets after the closing,**
7 **since you have gone to Barclays?**
8 A. Most of my -- my focus is obviously
9 trying to get management and structure in
10 place, so some -- I have been in some meetings
11 along the way. Jim Hraska has worked probably
12 most closely with Martin Kelly, Robert Azerad
13 in the post -- at Barclays to assist. I'd
14 say -- so it's been limited to the series of
15 meetings as it relates to these two specific
16 issues.
17 **Q. Two issues meaning the unencumbered**
18 **assets and --**
19 A. The 15C3.
20 **Q. And do you have a recollection of**
21 **what's gone on since the closing as to these**
22 **issues or --**
23 A. Again, more on the periphery of what
24 I have done, I have reviewed methodology to
25 ensure that I feel comfortable that the
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2 approach that someone like Monty or Jim has
3 taken makes sense to me, which it does, and I
4 feel very comfortable with the methodology
5 under the terms of the agreement, so where it's
6 been necessary to have my input, then I have
7 been involved. So I think we have created
8 additional schedules since bankruptcy at
9 Barclays which have been made available, so
10 that's been the extent of my involvement. And
11 the 15C3 calculation is rerun every week by the
12 trustee of LBI.

13 **Q. Previously I mentioned that you have**
14 **been designated as a 30(b)(6) witness for**
15 **select issues in this case by Barclays, so I**
16 **just wanted to take a few minutes to address**
17 **that issue in this deposition, so for this**
18 **portion of the deposition it will be a 30(b)(6)**
19 **deposition.**

20 **Have you ever -- did you review the**
21 **30(b)(6) deposition notice that we provided to**
22 **Barclays?**

23 A. I don't believe I have seen it.

24 MR. SHAW: If you show it to him, he
25 might know it.

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2 MR. HINE: Let's mark this as an
3 exhibit.

4 (Exhibit 81 B, Debtors' Second Rule
5 30(b)(6) Deposition Notice to Barclays on
6 Issues Relating to the Transfer of Assets,
7 marked for identification.)

8 **Q. Mr. Blackwell, I am handing you a**
9 **copy of Exhibit 81 B, which is a copy of the**
10 **Debtors' Second Rule 30(b)(6) Deposition Notice**
11 **to Barclays on Issues Relating to the Transfer**
12 **of Assets.**

13 **My first question is have you ever**
14 **seen this document before?**

15 A. In my discussions with Jonathan I
16 think I may have seen some portion --

17 MR. SHAW: We are not going to get
18 into the substance of those discussions.

19 **Q. I don't want to ask you about a**
20 **privileged communication you might have had,**
21 **but can you please turn to Schedule A of that**
22 **document.**

23 **As I understand from Barclays, you**
24 **have been designated as a witness as to the**
25 **first two topics listed on that schedule, so**

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2 **could you just take a minute and just take a**
3 **look at those topics.**

4 (Document review.)

5 A. Understood.

6 **Q. Okay. You will see those topics**
7 **relate to Schedules A and B that we have talked**
8 **about previously in the deposition, so I just**
9 **want to spend a little time talking about those**
10 **two schedules.**

11 **Let's look at topic number 1. Were**
12 **you involved in the selection of the securities**
13 **that made their way into Schedule A?**

14 MR. SHAW: Objection to form.

15 **Q. Let me rephrase it.**

16 **Were you involved in the selection**
17 **of the securities that are listed in Schedule A**
18 **to the Clarification Letter?**

19 A. I was involved in the transfer of
20 the Fed assets over to Barclays, so in terms of
21 selecting the assets, the selection was done as
22 I -- was done as I described, which was under
23 the terms of the repo agreement that was in
24 place between Lehman and Barclays at that time,
25 so eligible collateral is a component of that

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2 agreement and had been in place for some time.
3 So selection is done -- was done -- the assets
4 were put into the Fed repo. We know that there
5 were operational issues that I described in
6 terms of the assets changing because of the
7 settlement that took place at Chase, and then
8 there is also a subset of securities that
9 weren't eligible under the legal terms -- under
10 the commercial terms of the repo agreement
11 Barclays had in place with Lehman, which was
12 standard practice, that's why the Fed had
13 stepped in and provided liquidity to the whole
14 market with the PDCF, so poorer quality
15 collateral was funded by the Fed.

16 So it was clear based on the
17 schedules which securities fell outside of that
18 in terms of their quality. So yes, my team
19 worked with finance with the treasury team to
20 refine that list based on that requirement, and
21 in addition to that there were obviously some
22 substitutions that had to take place to make up
23 value, so my team worked again with finance and
24 the clearance teams to drive that -- to
25 finalize that list, but the list is a

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2 reflection of what moved.

3 MR. HINE: Okay. Let me go at it a
4 different way here. I have, unfortunately,
5 some hefty exhibits to pass to you.

6 (Exhibit 82 B, e-mail dated
7 September 20, 2008, Bates stamped BCI-CG
8 00035134, marked for identification.)

9 **Q. Mr. Blackwell, I am handing you a**
10 **lengthy exhibit marked as 82 B, which is a**
11 **list -- it's a document Bates stamped BCI-CG**
12 **00035134 through 35954. I am not going to ask**
13 **you about the contents of this entire document,**
14 **but I would like to direct your attention, if**
15 **you could take a minute and look at the page --**
16 **first page after the e-mail cover, the covering**
17 **e-mail, which is marked with the Bates number**
18 **35138. Do you see that page?**

19 A. Yes.

20 **Q. Can you tell me whether -- you will**
21 **see in this page a little summary of different**
22 **classes of collateral and their market value.**
23 **Do you see that?**

24 A. I do.

25 **Q. Could you tell me whether this is**
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2 **the collateral that made its way into**
3 **Schedule A?**

4 A. I would assume that it is, based on
5 the fact I provided the data to Paolo, but it's
6 Paolo's team that would have put this together,
7 so would have interpreted the valuations and
8 the content based on that.

9 **Q. Do you know if the value of the**
10 **securities listed on Schedule A is what's**
11 **listed here under the column Market Value?**

12 A. I don't know. It would be dependent
13 on how -- again, how -- I don't know how Paolo
14 ultimately put this together.

15 **Q. And when you say "Paolo," you are**
16 **talking about Mr. Tonucci?**

17 A. Yes.

18 **Q. So it's his team that would do the**
19 **valuation of this schedule?**

20 A. It's his team that created the
21 summary. Jim Hraska and my team, Monty
22 Forrest, helped create the data and pushed it
23 up to the treasury team for them to package.

24 **Q. Now, did the list of securities that**
25 **ultimately were listed on Schedule A change**
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2 **over time?**

3 A. Not that I understand, no.

4 **Q. Okay.**

5 A. What was at the Fed and what made it
6 to Barclays was different for a very sensible
7 set of reasons as I described, so -- and
8 perfectly legitimate reasons based on the legal
9 contracts that were in place at the time.

10 **Q. I understand that, but then at some**
11 **point the securities that made it to Barclays**
12 **were listed in Schedule A; correct?**

13 A. Right. So then it would be -- there
14 was a reconciliation carried out to the best of
15 our ability to what BONY had received, so that
16 would be part -- that would be what's in
17 Schedule A.

18 **Q. What are you reconciling when you**
19 **did that reconciliation?**

20 A. Lehman books and records to a BONY
21 statement. So effectively Barclays to Lehman,
22 what moved.

23 **Q. Barclays to Lehman?**

24 A. Yes.

25 **Q. Once the September 18th repurchase**
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2 **agreement was put in place and the securities**
3 **or assets that were collateral for the Fed**
4 **moved, some of which I understand didn't make**
5 **it because of the issues you have talked about**
6 **with respect to BONY, but once that set of**
7 **securities made it into the Barclays -- to**
8 **support the Barclays repo, were there any other**
9 **further changes to that set of collateral**
10 **between that time and the time that it was**
11 **listed on Schedule A?**

12 A. Not that I'm aware of. I can't --
13 Paolo would be better placed to describe that,
14 if there had been any change.

15 **Q. Mr. Tonucci would know specifically**
16 **about that?**

17 A. Yes.

18 (Exhibit 83 B, e-mail dated
19 September 21, 2008, Bates stamped BCI
20 006647 through BCI 006653, marked for
21 identification.)

22 **Q. Mr. Blackwell, I am handing you a**
23 **copy of Exhibit 83 B, which is a document Bates**
24 **stamped BCI 006647 through 6653. My first**
25 **question is if you have ever seen this document**
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2 **before.**

3 A. I think I saw it in conversations
4 with Jonathan.

5 **Q. In preparation for this deposition**
6 **you saw it?**

7 A. In preparation, yes. That's the
8 first time I saw it.

9 **Q. Okay. My question is if you look in**
10 **the center of the first page, it says "we**
11 **should book all positions from the Lehman**
12 **financing facility to BCI, approximately 45**
13 **billion securities, see attached file." Do you**
14 **see that?**

15 A. I do.

16 **Q. And the attached file is a list of**
17 **securities; correct?**

18 A. It's not a list of securities. It's
19 types, security types.

20 **Q. My question is do you know why this**
21 **approximately \$45 billion worth of securities**
22 **listed in this file and why that's different**
23 **than the numbers listed on the previous**
24 **exhibit?**

25 A. I don't.

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2 **Q. Who would have knowledge of that?**

3 A. Again, Paolo would probably be --
4 Paolo Tonucci would probably be the best person
5 to ask.

6 **Q. Again, I'm not trying to trip you up**
7 **here. I just want to know, you are not the**
8 **person with knowledge as to the value of how I**
9 **would compare 45 billion cited here with the 49**
10 **billion on the previous exhibit; correct?**

11 A. No, I'm not.

12 **Q. And it's probably someone in**
13 **Mr. Tonucci's shop who would be that person?**

14 A. Also somebody within Barclays as
15 well, heritage Barclays.

16 (Exhibit 84 B, e-mail dated
17 September 22, 2008, Bates stamped BCI
18 008149 through BCI 008670, marked for
19 identification.)

20 **Q. Mr. Blackwell, I am handing you a**
21 **copy of Exhibit marked 84 B, which is a**
22 **document with a Bates ranges BCI 008149 -- I**
23 **can't use the Bates ranges, because they appear**
24 **to have disappeared, but the first page is**
25 **marked BCI 008149, and attached to it is a**

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2 **lengthy spread sheet of some sort.**

3 **My question is if you have ever seen**
4 **this document before.**

5 A. Again, in preparation for this
6 deposition.

7 **Q. My question, similar to last time,**
8 **if you see on the front page it mentions a**
9 **total BONY market value of approximately 45**
10 **million. Do you see that?**

11 A. Yeah, I think that's a typo.

12 **Q. Why do you think that's a typo?**

13 A. This looks like more than
14 \$45 million of securities.

15 **Q. I think I might have misspoke. I**
16 **believe it says 45 billion. Is that right?**

17 A. Like I said, I saw this in
18 preparation.

19 **Q. Am I correct -- well, let me just**
20 **ask the question.**

21 **Could you explain to me the**
22 **difference in valuation between the securities**
23 **listed in this exhibit versus the first**
24 **Exhibit 82 that we just discussed?**

25 A. Is this Schedule A or Schedule B?

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2 **Q. That's my question to you.**

3 A. I don't know.

4 **Q. Is it fair to say that someone in**
5 **Mr. Tonucci's shop is probably the person I**
6 **should ask as to the difference in values as to**
7 **the different schedules?**

8 A. Yes.

9 **Q. If I showed you some more schedules**
10 **like this, would you give me that same answer?**

11 A. You are probably going to get the
12 same answer, yes.

13 MR. HINE: I did want to show you
14 one other massive exhibit, though.

15 (Exhibit 85 B, e-mail dated
16 September 30, 2008, Bates stamped
17 BCI-EX-(S)-00004396 through
18 BCI-EX-(S)-00004675, marked for
19 identification.)

20 **Q. Mr. Blackwell, I am handing you a**
21 **copy of Exhibit 85 B, which is Bates marked**
22 **BCI-EX-(S)-00004396 through 4675. I am not**
23 **going to ask you to look through this entire**
24 **document, Mr. Blackwell, but I would direct**
25 **your attention to the first three or four**

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pages, in particular what's entitled APA Lead Sheet, page marked number 1. Do you see that?

A. Yes.

Q. My first question is on the covering page this is an e-mail from Mary Korycki to yourself. Do you recall getting this e-mail?

A. I don't recall getting the e-mail.

Q. Do you recall receiving this document?

A. No, and I would not have printed it off.

Q. Have you ever seen this document before?

A. Not that I recall, no, I don't, going to an APA schedules meeting.

Q. Can you refer now to that third page I pointed you to which says APA Lead Sheet.

Have you ever seen a schedule like that before?

A. Possibly, but I don't really -- quite possibly.

Q. Could you tell me if the -- do you see the first part talks about Schedule A?

A. Yes.

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Q. And it comes to a total transferred under repo agreement of \$44 billion. Do you see that?

A. I do.

Q. Can you tell me if that's actually what is the value of the securities on Schedule A?

A. I can't.

Q. Okay. Do you --

A. It should be equal to what's on Schedule A, but I can't tell you definitively.

Q. Is this it something, again, I should ask folks in Mr. Tonucci's department?

A. Yes, and Jim Hraska.

Q. If you go further down on that list you see two entries entitled Positions Not With No Memo Seg. Do you see that?

A. I do.

Q. Can you tell me, do you know what that means?

A. I do.

Q. Can you tell me what it means?

A. It's a term that refers to the way that clearing boxes work, so that a clearance

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box will put a memo segregation on a position if there is a stock break, if there is a record break, i.e., if your books and records have a difference versus the outside -- the real world, as it were. And in addition to that memo seg is also put on securities where they are customer assets, so they are not unencumbered. So this is saying that there are -- Schedule B-1 has \$235 million worth of security positions which are unencumbered and in addition to that there isn't a memo seg in the system.

Q. And were you involved in preparing that schedule?

A. I was involved in the methodology and talking through the methodology. My team worked with finance to produce the schedule, so yes.

Q. And so that would be -- would that be Mr. Hraska as well?

A. Yes.

Q. And am I correct to say that he would supply the lists of securities to Mr. Tonucci's team who then arrives at this

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valuation?

A. Correct, or the valuations in the system.

Q. Positions with memo seg means?

A. So where there was an excess -- I will try and walk you through a real -- take an example. There may have been a memo seg in the system for a hundred thousand shares of IBM. The total position of IBM may have been a million shares, so in this instance the methodology would mean that we extract the hundred thousand shares, you would be left with 900,000 shares of IBM as unencumbered securities, which were available. So any customer assets that were segged or any breaks, so, again, it is a conservative approach to -- a methodology to identify unencumbered assets.

Q. So can I just to go with your hypothetical, you said if there was a million shares of IBM, 900,000 were unencumbered, they would go into the first entry on this -- they would go into Schedule B-1?

A. No, they would go into B-2.

Q. Did I say that backwards?

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A. Do you want me to explain it again?

Q. Yes.

A. Positions not with -- positions, I think, is a typo anyway. Positions with no memo seg. So what no memo seg means, in a scenario where there are a million shares assigned to what would have been probably a 931 trading account, i.e., firm inventory, so unencumbered assets, and there is no portion of that position which is being segregated by memo seg applied, then a hundred percent of that position would be applied as available unencumbered security. So that's B-1.

B-2 is saying positions with a memo seg, so in the scenario where there are a million shares of IBM, some of which is customer asset, potentially a hundred thousand shares, there is a segregation, so in order to protect the customers, only 900,000 of those securities would be available as firm inventory, again, comparing that versus the firm inventory account only. That's important. It's only the firm inventory accounts that are being looked at. And any excess over and above

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the seg is being applied in B-2.

Q. Okay. I understand.

Now, if we continue down this chart, you see 636 on the left-hand side, and can you tell me what those securities are?

A. That's going to be unencumbered corporates, I think.

Q. And does your department identify them?

A. They would have helped identify those, yes.

Q. Mr. Tonucci's crew would determine the value?

A. Probably, or it would be system driven, and it's not -- Paolo Tonucci's team would not necessarily be determining value. It's going to be a third-party source of data in most instances or model driven, so it's an application of pricing data, not generation of valuation.

Q. Okay. I understand that. But that's done in his department as opposed to yours?

A. It would have been in the systems.

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Q. So let's continue down. You see Friday, 9-26, transfers. What is that entry meant to embody?

A. I think that's additional securities being transferred as part of a repo on Friday morning, securities that hadn't necessarily made it over the previous night.

Q. That's not your effort to identify unencumbered securities that we talked about earlier?

A. I don't know, actually. I don't want to comment on that. I don't think so.

Q. Okay. So you are not the guy to ask on what that entry is about?

A. No.

Q. How about the following entries where it says "Monday transfer" and then there is one that says "Monday transfers par value," do you see that?

A. Yes, I do. I think talking to Paolo Tonucci or Jim would be more fruitful.

Q. You don't have any knowledge of what's that meant to embody?

A. Not exactly, no.

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Q. And where it says "footnote 1, includes 14 billion in chilled securities not delivered," do you understand what that means?

A. I think that's a reference to the point on the early e-mail where DTC had put a chill on the account, effectively frozen the account -- actually, that's not correct.

That's not correct. Chilled securities are securities that I think are going through some corporate event of some sort that are undeliverable at that point, potentially. Again, I may be misspeaking.

Q. You are not the person to ask about it?

A. No.

(Exhibit 86 B, chart, Bates stamped BCI-EX-00099519 through BCI-EX-00099521, marked for identification.)

Q. Mr. Blackwell, I am handing you a copy of an exhibit marked 86 B, which is Bates stamped BCI-EX-00099519 through 521.

My question is have you ever seen that document before?

A. No, I don't think I have seen it at

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2 all.
3 **Q. Would you know if the entries in the**
4 **upper third of the chart relate to Schedule A**
5 **securities?**
6 A. I couldn't say that definitively.
7 **Q. Do you know if the values listed on**
8 **line 14 where it shows PCG value of**
9 **approximately 42.5 billion, do you see that?**
10 A. Yes.
11 **Q. Do you know if that's the value of**
12 **the Schedule A securities?**
13 A. No. I don't know.
14 **Q. Could you look at the top, the**
15 **entries, you see it says "PCG value." Do you**
16 **know what that means?**
17 A. I could speculate. I think maybe
18 that may stand for product control group.
19 **Q. That's a Lehman division?**
20 A. Yes, that's the finance function.
21 If that's the -- if that's what it stands for.
22 **Q. You see the entry to the left of**
23 **that BONY value, do you see that?**
24 A. Bank of New York.
25 **Q. Right. Can you tell me why the**
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2 **values are different between those two columns?**
3 A. I can't, no.
4 **Q. How about to the right of the PCG,**
5 **do you see an entry that says "MV 922 with bid**
6 **offer," do you see that?**
7 A. I do.
8 **Q. Do you know what that column is**
9 **meant to signify?**
10 A. I don't know how it was created, but
11 the heading seems to suggest it as being
12 updated market data on the Monday.
13 **Q. Were you involved in creating that**
14 **column?**
15 A. I don't think I was.
16 **Q. Could you explain to me the**
17 **difference between that column and the prior**
18 **two?**
19 A. The market value has declined,
20 that's what that is showing, as far as I can
21 tell.
22 **Q. Okay, but can you explain to me how**
23 **the valuations were arrived at to create**
24 **column E?**
25 A. No, I can't.
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2 (Exhibit 87 B, JPM Chase assets,
3 Bates stamped BCI-EX-00108700, marked for
4 identification.)
5 **Q. Mr. Blackwell, I am handing you a**
6 **copy of Exhibit 87 B, which is a spread sheet**
7 **with Bates stamps BCI-EX-00108700 through --**
8 **the second page is marked 109154.**
9 THE COURT REPORTER: There is only
10 one page.
11 **Q. My question is only on the first**
12 **page, so let me ask you, page 108700, do you**
13 **see that page?**
14 A. I do.
15 **Q. Are you familiar with how this chart**
16 **was derived and prepared?**
17 A. No.
18 **Q. Do you know what JPM Chase assets**
19 **it's referring to?**
20 A. I don't.
21 **Q. Would that be something I should ask**
22 **someone in Mr. Tonucci's group?**
23 A. Yes.
24 (Exhibit 88 B, chart, Bates stamped
25 BCI-EX-00109154 through BCI-EX-00109161,
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2 marked for identification.)
3 **Q. Mr. Blackwell, I am handing you a**
4 **copy of Exhibit 88 B, which is Bates marked**
5 **BCI-EX-00109154 through 161. My questions have**
6 **to do with page 109156.**
7 A. This is a Barclays document. I have
8 never seen an acquisition balance sheet.
9 **Q. Okay. That was my question. Did**
10 **you ever see this before?**
11 A. No.
12 **Q. Do you know -- could you tell me, if**
13 **you look down the left-hand column, whether --**
14 **which of those assets made it to Schedule A**
15 **versus Schedule B?**
16 A. Absolutely no idea.
17 **Q. Could you tell me what the valuation**
18 **adjustment entry on number 12 is, on line 12?**
19 A. No.
20 MR. SHAW: You are ranging a little
21 far afield from the two topics.
22 MR. HINE: I hear you.
23 **Q. These are topics that you have no**
24 **knowledge of; right?**
25 A. No, I don't.
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2 MR. HINE: Mr. Blackwell, I have no
3 further questions for you. Thank you for
4 your cooperation. And I think some of my
5 colleagues would like to ask you a few
6 questions.
7 MR. SHAW: Can we take five minutes.
8 (Recess was taken from 2:26 to
9 2:32.)
10 EXAMINATION BY
11 MR. OXFORD:
12 Q. Mr. Blackwell, we met earlier off
13 the record. As you know, my name is Neil
14 Oxford. I am with Hughes Hubbard & Reed and we
15 represent the SIPA trustee in this case.
16 I would like to follow up on some of
17 Mr. Hine's questions and your answers thereto.
18 You testified about a set of actions
19 that you took to provide Mr. Lowitt with data.
20 Do you remember testifying about that?
21 A. Yes, I do.
22 Q. And you said that at some point it
23 became clear to you that certain of these
24 components became part of the transaction with
25 Barclays. Do you remember saying that?
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2 MR. SHAW: Objection to form.
3 A. What components were we talking
4 about at the time?
5 Q. I think you answered the question in
6 very general terms, which is why I am following
7 up.
8 A. Can we refresh?
9 Q. Sure. Let's try it this way. At
10 some point you said Mr. Lowitt gave you your
11 marching orders over the weekend of the 21st
12 and 22nd. Do you remember saying that?
13 A. Yes, I do.
14 Q. Can you tell me everything you
15 recall about those marching orders.
16 A. My instructions were to work with
17 the finance team to determine at one point --
18 well, to find out if there was any unencumbered
19 collateral in the boxes and to work with
20 finance to recalculate the 15C3.
21 Q. Did you understand Mr. Lowitt to be
22 asking you and your team to go and find and
23 identify \$1.9 billion of unencumbered
24 collateral in what you called the clearance
25 box?
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2 A. I think initially the goal -- there
3 was a target set. Actually, let me correct
4 that. Initially we were working to just
5 determine if there was any unencumbered. Then
6 there was a target set and then it changed
7 again ultimately to be that any of the assets
8 in the clearance box, unencumbered assets in
9 the clearance boxes were -- were potentially
10 included in the deal.
11 Q. Okay. I'd like to break that down.
12 Do you remember when you first had a
13 conversation with Mr. Lowitt about your role in
14 determining the existence or otherwise of
15 unencumbered assets over the weekend of
16 September 20th and 21st?
17 A. I don't know when precisely that
18 took place, no, I don't.
19 Q. Do you know if it was before or
20 after the sale hearing in the bankruptcy court
21 on September 19th?
22 A. So that was on the Friday?
23 Q. That was on Friday.
24 A. No, it would have been -- that would
25 have taken place over the course of the
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2 weekend, so actually Saturday, Sunday. My
3 marching orders of 5:00 on that Friday were to
4 be ready for business on Monday. That was my
5 recollection.
6 MR. SHAW: Let me offer a belated
7 clarification, because, of course, the
8 hearing actually carried through into
9 Saturday morning, so you may want to
10 clarify that as well.
11 MR. OXFORD: That's a good
12 clarification.
13 Q. To the best of your recollection, it
14 is sometime on Saturday morning that Mr. Lowitt
15 had that conversation with you rather than
16 Friday evening?
17 A. I think it was over the course of
18 Saturday, yes, because I think in -- if you
19 look at my e-mail, which I'm sure you have,
20 there is -- the process starts and as that
21 process starts, we are working through as a
22 team, again, how we are going to review -- what
23 available data there is or how to go and get
24 the data, so it's about the process of
25 gathering data to determine what is
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unencumbered.

Q. Did you have a number of conversations with Mr. Lowitt over the weekend about the subject of the unencumbered assets?

A. I would imagine so, yes.

Q. But is it fair to say they kind of blur a little bit into one?

A. It was -- yes. It was -- they did. It's hard to know exactly when and where these conversations took place, but clearly we were using e-mail a lot as well to just ask people to create it.

Q. Were any of your conversations with Mr. Lowitt face to face?

A. Some of them would be, yes. Ian was not -- some of them might have been. Fairly infrequently.

Q. Did Mr. Lowitt prefer to communicate by e-mail?

A. I just had a very narrow set of actions I was focused on, right, so I think it wasn't a question whether he preferred to communicate or not. I was doing the task that had been sent me and he wanted updates. He

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would send "any update." I think there are lots of e-mails like that, and there were lots of e-mails from me to the various teams that were working on these things saying "any updates."

Q. Understood. Do you remember when your first conversation with Mr. Lowitt was about this task that he had sent you?

A. No, and it's possible it was Paolo that initiated the work even. Paolo Tonucci may have even initiated the work.

Q. So you may have gotten your marching orders indirectly from Mr. Lowitt?

A. That's quite possible.

Q. You said that your task changed over time and that your first task was to determine whether there was, in fact, any unencumbered assets; is that correct?

A. Correct.

Q. Did you have any understanding of why it was you had been sent this task?

MR. SHAW: Objection. Asked and answered.

A. As I stated earlier, I had a goal

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that was sent me. It wasn't a period of time when we were asking lots of questions about why we were doing it.

Q. Did you come to learn at any time that the purpose of you and your team identifying unencumbered assets was that they be transferred to Barclays?

MR. SHAW: Objection. Asked and answered.

A. There was a -- my understanding was at some point later on over the course of the weekend, I actually think it may even have been the Monday that we were talking about transferring these assets, talking with I think the trustee of LBI even at that point.

Q. That was a conversation you had with the trustee of LBI?

A. I didn't, no, but people within my organization or people within the former Lehman organization were having those conversations.

Q. Okay. What do you remember about that conversation?

A. I don't -- I didn't have it, so I don't recall it.

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Q. You just remember that there was a conversation with the trustee?

A. Yes.

MR. SHAW: Objection.

Q. About the subject of transferring assets?

A. I recall that there were -- there was a dialogue with the trustee.

Q. When you say "the trustee," do you mean the trustee directly or the trustee's office and his staff?

A. I think it's probably something like Anson Frelinghuysen.

Q. We will put that under staff.

The second part of your marching orders appears to be to ascertain the existence or otherwise of any excess in Lehman's 15C3 account; is that correct?

A. It was to recalculate the 15C3. The moneys and securities that were locked up in association with that were managed by the treasury function, I contributed data into the calculation which finance ran and we ran that calculation.

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2 **Q. And as I understand it, it is**
3 **Mr. Tonucci's team I think you said owns that**
4 **calculation?**

5 A. No, it's not. It's Tony Stucchio
6 who reported to Martin Kelly.

7 **Q. And Mr. Kelly's position at the time**
8 **was?**

9 A. Financial controller.

10 **Q. And that's a separate reporting**
11 **stream from yourself and separate --**

12 A. Reported to Ian.

13 **Q. And separate from Mr. Tonucci?**

14 A. Paolo reported to Ian.

15 **Q. Did anybody tell you at any point,**
16 **Mr. Blackwell, that a certain amount of the**
17 **excess, if any, in the 15C3 fund was to be**
18 **transferred to Barclays?**

19 MR. SHAW: Objection to form. Asked
20 and answered.

21 A. There was a discussion about a
22 mechanism potentially, and I think I had that
23 conversation with Gerard LaRocco, to transfer
24 cash if the SEC, Mike Macchiaroli, signed off
25 that there was, indeed, an excess at a point in

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2 time. Now, that changed. That was a mechanism
3 we looked at and discarded. So that's the only
4 conversation that I had around moving cash.

5 **Q. When did you have that conversation**
6 **with Mr. LaRocco?**

7 A. I don't recall, again, exactly the
8 exact time. It was probably on -- late on
9 Saturday, maybe Sunday, but certainly over that
10 weekend.

11 **Q. Mr. LaRocco was employed by Barclays**
12 **at that time; correct?**

13 A. Correct, but that was more about how
14 do you technically move money over a weekend.

15 **Q. What was the mechanism you discussed**
16 **with Mr. LaRocco?**

17 A. This is an operational process. You
18 can't move money on a weekend, so discussing
19 opening up a bank account at -- I think it was
20 at Wells Fargo. We didn't pursue that any
21 further.

22 **Q. It sounded like you also discussed**
23 **with Mr. LaRocco the need for the SEC to sign**
24 **off on any transfer of 15C3 funds; is that**
25 **accurate?**

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2 A. Well, the SEC would have to give --
3 it is a bankrupt entity -- or the SEC would
4 need to approve any cash movement out of the C3
5 lock-up.

6 **Q. What's the basis of your knowledge**
7 **about that subject?**

8 A. Just -- what do you mean by the
9 "basis"?

10 **Q. How is it you are able to testify**
11 **about that fact?**

12 A. What fact?

13 **Q. That the SEC would have to approve**
14 **any transfer from a bankrupt entity.**

15 A. Because of the experience that I
16 have had.

17 **Q. That's all I was asking.**

18 **Did you have any conversations with**
19 **the SEC that weekend about the subject of the**
20 **15C3 in particular?**

21 A. Not over that weekend, no. I think
22 I had conversations with -- I had many
23 conversations with the SEC post, but not over
24 that weekend.

25 **Q. The conversations that you have had**

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2 **with the SEC subsequent to that weekend, are**
3 **they related to the transfer of funds from**
4 **Lehman's 15C3 account to Barclays?**

5 MR. SHAW: Objection. Form.

6 A. I wouldn't characterize them that
7 way. The -- no, I wouldn't characterize them
8 that way.

9 **Q. How would you characterize them?**

10 A. The conversations I had with the SEC
11 have been around asset transfers, not
12 necessarily related to moneys due from the
13 15C3, although I think I have had one
14 conversation post the LBI bankruptcy with Mike
15 Macchiaroli and some other members of his
16 office where we discussed this and provided --
17 I think we may have -- we had a discussion
18 around the 15C3. That was probably the only
19 direct conversation we have had specifically
20 around the 15C3. Then in relation to other
21 asset transfers, the PIM asset transfer, we
22 have had a plethora of conversations of which
23 the 15C3 is a source of customer protection
24 and, therefore, moneys that you would expect
25 would be released as it relates to the PIM

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2 transfer, so it's slightly tangential.

3 **Q. When did you have this conversation**
4 **with Mr. Macchiaroli?**

5 A. I don't know the exact date. It was
6 probably on the Tuesday -- sometime in the
7 first week.

8 **Q. And when you say "the first week,"**
9 **just so we have a clear record --**

10 A. My first week at Barclays.

11 **Q. Who else was present for that**
12 **conversation with Mr. Macchiaroli?**

13 A. Kendall McLaughlin and Alex Crepeau,
14 I think. I may not be correct.

15 **Q. Who is Kendall McLaughlin?**

16 A. He was responsible for regulatory
17 operations at Lehman Brothers.

18 **Q. Does he work for Barclays now?**

19 A. He does not at present. He did
20 transfer. He subsequently left.

21 **Q. Do you know where he is employed**
22 **now?**

23 A. Citibank.

24 **Q. And Mr. Crepeau you mentioned**
25 **earlier. Was he --**

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2 A. Kendall's boss.

3 **Q. Did he transfer to Barclays?**

4 A. He did.

5 **Q. And is he still employed by**
6 **Barclays?**

7 A. He is.

8 **Q. Do you know what his position is?**

9 A. He is responsible for regulatory
10 operations. He replaced Kendall. He had
11 previously post bankruptcy been responsible for
12 the LBI TSA, the services provided by Barclays
13 to LBI for operations only.

14 **Q. Do you recall why it is you met with**
15 **Mr. Macchiaroli?**

16 A. Yes. We discussed the potential
17 transfer of -- we wanted to transfer the
18 initial funding of the PIM accounts so -- this
19 is actually -- this meeting is later. This is
20 a week later, actually. Sorry. My
21 recollection is wrong. This is later on, this
22 meeting.

23 **Q. So if we are talking about the**
24 **closing of the deal on Monday, the 22nd, of**
25 **September, you think it's sometime the week**

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2 **of --**

3 A. I think it's later.

4 **Q. The week of Monday 29th?**

5 A. Or even possibly later.

6 **Q. Possibly afterwards?**

7 A. Yes. So we were talking about the
8 transfer of the loan, the cash in the 15C3 that
9 was related to the margin loans, and that was,
10 I think, the first element of the conversation,
11 and I think the second component of the
12 conversation was as it related to the
13 \$769 million worth of securities, Ginnie Maes
14 held at Chase that potentially were going to be
15 delivered as part of the -- that was one way to
16 satisfy the component of the APA, it would
17 either be securities or some alternative value.

18 **Q. Can you explain to me a little more**
19 **about your conversation that related to the**
20 **first alternative, the first part. You said it**
21 **was cash in the 15C3 account or fund that**
22 **related to the margin. What do you mean by**
23 **that?**

24 A. That's related to PIM. PIM
25 customers take, borrow money against their

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2 positions. They can borrow up to 440 percent
3 of value.

4 **Q. And you said the second subject, I**
5 **think probably the subject that I am more**
6 **interested in, is the \$769 million of Ginnie**
7 **Mae securities that you said were potentially**
8 **to be transferred pursuant to the agreement**
9 **with Barclays; correct?**

10 A. 769 value, so that was either going
11 to be satisfied through Ginnie Maes or other
12 alternative value, if there is an excess in the
13 C3, the 769 value.

14 **Q. It sounds like you have an**
15 **understanding now of the deal between Barclays**
16 **and Lehman, is that correct, at least in this**
17 **respect?**

18 A. Yes.

19 **Q. Can you tell me without waiving any**
20 **privilege, of course, and any of my questions**
21 **are not designed to discover information that**
22 **you discussed with your attorneys, but can you**
23 **tell me how it is you came to have that**
24 **understanding of the APA. I ask because your**
25 **answers to Mr. Hine's questions suggested you**

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weren't really involved and have no knowledge of the deal and now you are telling me you have some knowledge of the deal.

A. This was after the event, after the deal had closed, I believe, and that was where these conversations began, in terms of actioning the content of the deal.

Q. Right. Okay.

A. It doesn't mean I had an understanding of the whole deal.

Q. I understand. I don't think you quite answered my question, though, which is how is it that you came to have an understanding that this was a term of the deal?

MR. SHAW: If you can answer the question without revealing discussions with counsel.

A. That is probably the most likely source.

Q. Okay. Let's try it this way. What did you and Mr. Macchiaroli discuss in this meeting that you testified about that took place sometime in the week of September 29th or perhaps later?

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A. Asking the SEC to review the calculation and release and authorize -- provide their sign-off that the C3 had an excess or otherwise, but have an opinion on the C3 and authorize a sign-off to the trustee of LBI to release the cash related to the margin balances, as I mentioned before, another element of the PIM transfer, and securities from -- securities from JPMorgan Chase.

Q. Was this a meeting that you had requested, Mr. Blackwell?

A. I don't recall whether I requested it. It's quite possible I did. The SEC set up an office at 745, so were available.

Q. Where did the meeting take place, at the SEC's office at 745?

A. Correct.

Q. And this was Mr. Macchiaroli's office?

A. Yes.

Q. Do you have any notes of the conversation you had there?

A. I don't believe I do. I could go back to my -- I could go back and try and

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review my papers.

Q. Where would they be if you had them?

A. Where would they be? They are most likely going to be in my e-mail and they are also potentially in my boxes of files which I have already reviewed and looked through, so I can do that based on these questions.

Q. Your counsel and I can talk off the record about our document requests.

What was Mr. Macchiaroli's response to your request that the SEC review and sign off the 15C3 calculation?

A. I don't think he was comfortable doing it, doing that at that point. He wanted to get a better understanding of the books and records at that point. So I think we continued to work with members of the SEC and to try and provide them with a better understanding and the finance team probably led that effort in terms of the overall 15C3.

Q. At the time you asked Mr. Macchiaroli to sign off on this calculation -- withdrawn. I am going to set that up a little better.

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You testified in response to Mr. Hine's questions that you were uncomfortable about the accuracy of the C3 calculation over the weekend of September 20th and 21st; correct?

A. To be precise, what I said, I was uncomfortable about some of the inputs into the calculation, not the calculation itself.

Q. I didn't mean to mischaracterize your testimony. I didn't mean to suggest that somehow the formula wasn't properly applied, but it seemed to me that as of Sunday night, the 21st, you were not comfortable that the calculation, because of the reasons you have testified to, you are not comfortable that the calculation or the result of the calculation was a hundred percent accurate; is that correct?

A. That's correct.

Q. And what happened between Sunday the 21st of September and this meeting with the SEC a week or so hence that allowed you to become comfortable that the calculation was correct?

A. I wasn't talking about the accuracy

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2 of the calculation. I was talking about the
3 components that we would request from the C3.
4 So the request was there are certain components
5 that are owed to Barclays as under the terms of
6 the APA and, therefore, would you be
7 comfortable signing off based on the value of
8 the moneys that are locked up. So the
9 conversation, as far as I recall it, wasn't
10 about how accurate the calculation was. So if
11 Mike had concerns about the accuracy, then,
12 again, we were working with him to try to
13 provide him with some level of comfort as to
14 how the calculation had been constructed and he
15 wanted to carry out that review.

16 **Q. I am going to try that question**
17 **again, because I'm not sure that you answered**
18 **it.**

19 **You were talking with**
20 **Mr. Macchiaroli about the components you would**
21 **request from the C3. That's what you just**
22 **said?**

23 A. Let me --

24 **Q. Can you explain that a little more.**

25 A. The request related to the
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2 calculation itself. There is a component
3 that's associated with margin debits and margin
4 credits, so these margin loans related to PIM
5 customers. I was asking that Mike sign off --
6 the SEC sign off the release of that money from
7 within the 15C3, because it was in the
8 calculation, and I think that component we
9 could highlight very accurately as being
10 correct without any question. So we were
11 asking for that money to be released and that
12 was the main driver of my conversation, I
13 believe, that's what I recall anyway, with
14 Mike. In addition to that I think in the same
15 meeting that I had with Mike I asked if he was
16 able to authorize the release of the securities
17 as well.

18 **Q. When you say "the securities,"**
19 **again, just so we have a clear record, you mean**
20 **the 769 Ginnie Mae securities that were held at**
21 **JPMorgan Chase that are referenced in the**
22 **Clarification Letter?**

23 A. Yes.

24 **Q. Why did you ask him to do that, sir?**

25 A. Because that was part of the
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2 agreement.

3 **Q. Had you become comfortable between**
4 **the night of Sunday the 21st of September and**
5 **the date of your request to the SEC some week**
6 **or so later that the C3 calculation you had**
7 **performed was a hundred percent accurate?**

8 A. I wasn't --

9 MR. SHAW: Objection to form.

10 A. I was not saying that the
11 calculation was a hundred percent accurate. I
12 wasn't making that assertion.

13 **Q. So why did you ask Mr. Macchiaroli**
14 **to authorize the release of this money?**

15 A. Because that was part of the
16 agreement.

17 **Q. What was part of the agreement?**

18 A. That if there was an excess in the
19 calculation, and I'm not the person that is
20 going to determine whether there is an excess
21 or not, I think Mike and the finance team would
22 be the people that would determine whether
23 there was, that if there was an excess,
24 \$769 million worth of Ginnie Mae securities
25 held at Chase were part of the agreement and

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2 that value should be paid to Barclays.

3 **Q. Were you comfortable at the time of**
4 **your request to Mr. Macchiaroli that there was**
5 **at least \$769 million of excess in the C3**
6 **account at Lehman?**

7 A. Again, I'm not the expert on the C3
8 calculation, so I'm not making -- I'm making a
9 request based on the components that I'm
10 involved in. So not the whole calculation. I
11 don't have -- I would need to look at the
12 schedules that were shown to Mike at the time.
13 But if the schedules had shown an excess, then
14 that would give me a level of comfort.

15 **Q. I don't wish to belabor the point,**
16 **but it seems to me that you have two choices.**
17 **Either you got comfortable that the C3**
18 **calculation was accurate between Sunday night,**
19 **the 21st, and whenever you asked**
20 **Mr. Macchiaroli to release this, or you asked**
21 **him to release it not knowing whether or not**
22 **these calculations showing an excess of 769**
23 **million or more was accurate.**

24 MR. SHAW: Objection to form.

25 A. That's not what I was representing.

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2 I was discussing with Mike the fact that there
3 are multiple components for 15C3 calculation,
4 multiple components, of which I am not expert
5 at the multiple components. Over the course of
6 the weekend leading -- the 21st, 20th, 21st,
7 the work that was done was to determine the
8 operational components that go into a 15C3
9 calculation which is some of the components
10 that we would -- that operations would provide,
11 and there are many other components that make
12 that up. That calculation then determines how
13 much money is locked up. I don't know at that
14 point in time when that conversation happened
15 how much money was locked up. Mike and the
16 trustee of LBI knew how much money was locked
17 up and what the value of that calculation was.
18 But I would need to look at papers from there
19 to determine whether there was an excess. The
20 request was on the basis that if Mike felt
21 there was an excess, when could we discuss
22 having the \$769 million worth of securities.
23 If there isn't an excess, then I'm not
24 expecting him to release the securities. But
25 then alternative value would need to be found
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2 away from the C3.
3 **Q. We will come back to the alternative**
4 **value in a little bit.**
5 **Have you had any subsequent**
6 **conversations with the SEC about the subject of**
7 **C3?**
8 A. Yes. Again, as it pertained to the
9 margin debits and the PIM asset transfer,
10 multiple. Too many to list.
11 **Q. Have you had any conversations with**
12 **the SEC about the \$769 million?**
13 A. I don't think I have had any
14 subsequent conversations.
15 **Q. Do you know if anybody else at**
16 **Barclays has had conversations with the SEC**
17 **about the release of 769 from the 15C3 account?**
18 A. I don't know is the -- I don't know.
19 **Q. Were you ever asked over the**
20 **weekend, sir, the weekend of September 20th and**
21 **21st, to do any work as it relates to Lehman's**
22 **margin or deposits at the OCC or any other**
23 **exchange?**
24 A. I don't recall doing any work on
25 that.
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2 **Q. Do you recall ever hearing that**
3 **Lehman's margin or deposits at the OCC or any**
4 **other exchange were ever part of the deal**
5 **between Lehman and Barclays?**
6 A. Over the deal weekend, no.
7 **Q. That answer suggests to me that**
8 **subsequently to the deal weekend you have heard**
9 **that.**
10 A. I understand that to be the deal.
11 **Q. And, again, without wishing to**
12 **invade any privilege that you may have, can you**
13 **tell me how it is you came to learn that piece**
14 **of information?**
15 A. I learned that as part of some
16 conversations that I think took place --
17 meetings that took place between the trustee of
18 LBI, a member of my staff, and Barclays'
19 counsel, so I...
20 **Q. That's fine. It's probably not**
21 **privileged, but I don't need to go into it.**
22 **You said in response to one of**
23 **Mr. Hine's questions that one of your**
24 **responsibilities over the weekend was to**
25 **monitor settlement activity between various**
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2 **clearing organizations.**
3 A. Not over the weekend, because there
4 is no settlement can take place over the
5 weekend.
6 **Q. I'm sorry. I misspoke.**
7 **Was monitoring settlement activity**
8 **in various clearing organizations part of your**
9 **responsibility in the week preceding the LBI**
10 **bankruptcy on the 19th of September?**
11 A. Correct.
12 **Q. Can you tell me a little more about**
13 **your role in monitoring the settlement**
14 **activity, please.**
15 A. My settlement teams were obviously
16 working very closely with these exchanges to
17 try and clear the business and working with the
18 treasury team to fund -- to make sure the boxes
19 were funded as much as they possibly could, and
20 over the course of that week funding obviously
21 started to disappear, so settlement started to
22 wind down. The most notable event apart from
23 Chase not providing clearance on the Friday
24 before bankruptcy was DTC raising the debit cap
25 to zero, which basically prevented us from
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2 being able to settle transactions.

3 **Q. What does that mean, raising the**
4 **debit cap to zero?**

5 A. It means that the account is
6 effectively not funded, so the process of
7 settlement can't take place.

8 **Q. I have heard that over the week**
9 **prior to LBI's bankruptcy that DTC was**
10 **threatening not to clear trades.**

11 **Is that the same thing that you have**
12 **just told me in slightly different language?**

13 A. Yes.

14 **Q. Do you have an understanding of why**
15 **DTC was threatening not to clear trades?**

16 A. Because the account -- because of
17 funding, funding the account, cash being made
18 available to fund the account. The treasury
19 organization would fund all the clearing
20 systems. If they had insufficient cash to fund
21 or insufficient cash to fund a clearing
22 mechanism, then the mechanism doesn't work.

23 **Q. Did you have any conversations with**
24 **anybody at DTC about the funding issues you**
25 **just described?**

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2 A. I was informed by Neal Ullman, who
3 had a direct call with DTC, I had a
4 conversation, I think it was an e-mail
5 conversation and then ultimately a conversation
6 directly with Ian when we became aware of the
7 situation. I asked Paolo as well if he could
8 fund the account. So that was -- and asked him
9 to -- I think there is an e-mail me asking for
10 \$1.2 billion to be put into the clearance box.

11 **Q. What was Mr. Tonucci's response to**
12 **your request?**

13 A. I don't remember one.

14 **Q. You took that as a no?**

15 A. I, yeah, moved on.

16 **Q. At any point did you have an**
17 **understanding, Mr. Blackwell, of the terms of**
18 **the deal between Lehman and Barclays as to**
19 **Lehman's DTC box?**

20 A. I think I have discussed this in
21 some of my earlier answers. I was under the
22 working assumption that there would be a
23 conversion of, I think, the 074 box, the DTC
24 box. That was not accurate. There was
25 definitely dialogue between the regulators,

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2 which I wasn't in, but I'm aware of, between
3 the regulators, DTC and Barclays and Lehman as
4 to Barclays taking responsibility. I think
5 Barclays was very clear that we not take
6 responsibility for the liabilities of the
7 boxes.

8 **Q. You testified earlier that you had**
9 **made a suggestion that Barclays go and look at**
10 **Lehman's DTC books. Do you remember that?**

11 A. I do.

12 **Q. For what purpose were you making**
13 **that suggestion?**

14 MR. SHAW: Asked and answered.

15 A. So that it was possible to
16 understand any settlement risk.

17 **Q. Was that suggestion made at a time**
18 **when Barclays was considering stepping into**
19 **Lehman's shoes at DTC?**

20 MR. SHAW: Objection. Foundation.

21 A. I don't know what the -- I don't
22 know.

23 **Q. Well, let me ask it this way: The**
24 **conversion plan about which you have testified,**
25 **you said that as of, I believe, Friday**

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2 **afternoon, maybe around 5:00, you said the**
3 **conversion plan was no longer going to be**
4 **affected; is that correct?**

5 A. Correct.

6 **Q. Did you understand at any point**
7 **after 5:00 on Friday Barclays was still**
8 **assessing the risk in Lehman's DTC box?**

9 A. Not at that point. That issue
10 didn't come up until Sunday.

11 **Q. Do you have any understanding as to**
12 **why the issue arose on Sunday?**

13 A. I believe it's because the
14 regulators and other entities that were
15 involved in signing off on the deal were
16 insisting that the box should be -- Barclays
17 should take responsibility for the box, which
18 they did not want to do.

19 **Q. Where did you get that**
20 **understanding, that the regulators wanted**
21 **Barclays to take over the box?**

22 A. I would have heard it either from
23 Ian or from -- maybe even from Alex Crepeau.

24 **Q. Does that answer exhaust your**
25 **recollection of the regulators' interactions**

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with Barclays on this issue?

A. I was not part of them, so yes, it does.

Q. Do you understand that Barclays -- withdrawn.

Did Barclays decide to take over the box in whole or did they decide to just take the assets rather than the liabilities?

MR. SHAW: Objection. Foundation.

A. My understanding is that Barclays agreed to take unencumbered assets. This is a post-event recollection. Agreed to take unencumbered assets and not take responsibility for clearance boxes of Lehman Brothers.

Q. Do you have any understanding as to the reasons that decision was made?

A. No.

Q. You never talked to anybody about it?

A. It's possible, but, again, we were moving on to a building mode at Barclays.

MR. OXFORD: I'd like to show you a few documents, please.

(Exhibit 89 B, e-mail dated

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9-19-2008, marked for identification.)

Q. Mr. Blackwell, you have in front of you a document I have marked as Exhibit 89 B. Can you read that and let me know when you have had a chance to look over it.

(Document review.)

A. Okay.

Q. You will see in the e-mail that's ultimately forwarded to you, the bottom e-mail in the chain is an e-mail from Chris Concannon at NASDAQ to Gerald Donini. Do you see that?

A. I do.

Q. Who is Mr. Donini?

A. Gerry Donini is -- or was head of equities at Lehman Brothers.

Q. Where is Mr. Donini now?

A. He is at Barclays Capital. Holds the same position.

Q. You see the last line of the first paragraph, the last sentence of the first paragraph says: "DTC is contemplating a cease act notice for LEHM tonight." Do you see that?

A. I do.

Q. That e-mail chain is ultimately

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forwarded to you and to Mr. Joseph Lodato by Gerald Donini. Do you see that?

A. I do.

Q. Mr. Donini writes to you and Mr. Lodato "need an answer and help."

A. I think Gerry probably answered that. Gerry was responsible for compliance for the equity division. At that point I had no understanding of what Barclays' intent was around the boxes other than to assume they were taking responsibility for them at that point.

Q. Why was it you assumed they were taking responsibility for it? Is that because you were still in your conversion mindset, as it were?

A. Yes. So I don't think I confirmed or denied -- I don't think I responded to this.

Q. You don't recall speaking to Mr. Donini or Mr. Lodato about this?

A. It's possible I did, but, again, in light of the number of things going on, it was possible that I didn't follow through on that particular item.

MR. OXFORD: Okay. That's all I

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have for that document.

(Exhibit 90 B, e-mail dated

9-19-2008, marked for identification.)

Q. Mr. Blackwell, you have in front of you Exhibit 90 B. I should say, just so we are clear, there is a somewhat complicating factor when these e-mails were processed in the timing, so the first line of the "sent," which is up here as 2:53 p.m., is actually in Greenwich meantime, so that is an e-mail that was sent at 10:53 a.m. on Friday.

A. 10:53 --

Q. A.M. on Friday, but the e-mails below the chain -- sorry, in the chain, are in Eastern standard time.

A. Okay. So this is the morning of Friday.

Q. Friday morning.

A. We are still in conversion mode.

Q. Still in conversion mode.

Mr. Nicholson writes to you and Mr. Lodato again asking for guidelines as to what is going presumably to Barclays. Correct? That's how you read it?

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A. I would read it that way, yes.

Q. And you reply "currently being argued, they are taking all the DTC 074 box."

A. And, again, that was an assumption at that point in time that the box was going.

(Exhibit 91 B, e-mail dated

9-21-2008, marked for identification.)

Q. Mr. Blackwell, you have in front of you what I have marked as Exhibit 91 B, which at the top is an e-mail that's sent by you on Sunday, the 21st of September, at 2:43 a.m., that's what it bears, but it would have been sent at Saturday, 10:43 p.m. on the 20th.

A. Okay.

Q. I say this as much for your benefit as to try to keep myself --

A. I was definitely --

Q. Below you write an e-mail at 10:38 p.m. to Mr. McDade and to Mr. Lowitt saying "DTC suggestion."

Does this reflect a suggestion by you that Barclays review the Lehman assets at DTC?

A. Yes, it does. To give -- it's to

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give -- I think we discussed this earlier.

This is to give Barclays access to the DTC clearance boxes either to review unencumbered assets or fails. I don't know what topic I am referring to. Probably on the Saturday it's referring to unencumbered.

Q. Sorry, can you explain that last answer.

MR. SHAW: You are going to need to ask a more precise question.

Q. You said "either to review unencumbered assets or fails." What do you mean by reviewing unencumbered assets?

A. What do I mean by reviewing unencumbered assets? That's probably not accurate. I am just thinking in terms of the timeline of when this was sent and what I was focused on. So I think the primary purpose of this effort was to allow Barclays to review the failing transactions. I do think that was the primary purpose, but I can't be a hundred percent sure. I'm sure there are more e-mails associated with this.

Q. In the context of Barclays' review

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of Lehman's DTC box, what did TBAs mean to you? They are not on this document.

A. I wasn't in -- I don't -- I don't know. It's a type of security.

Q. Was it a type of security that was in Lehman's DTC box?

A. It's quite possible.

Q. Was it a type of security that you had any understanding Barclays was concerned about?

A. I don't know.

Q. Is it a type of security that comes with any potential liabilities?

A. I think any security comes with a sort of liability. They go up and down, so any security has liability.

(Exhibit 92 B, e-mail dated

9-20-2008, marked for identification.)

Q. I've marked as Exhibit 92 B what I think is a double-sided document. It's a two-page document that is ultimately forwarded -- sorry -- that is ultimately sent by you on Saturday at 7:14 p.m. Eastern. Subject, 1.4 billion update. If I can direct

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your attention to the original e-mail in the chain, which is on the reverse of your exhibit, there is an e-mail that is not sent to you at this stage, but it's forwarded up to you. It's from Mr. Lowitt to Mr. McDade and Mr. Berkenfeld on Saturday, September 20 at 5:53 a.m.

Mr. Lowitt writes: "Did the court accept the 15C3 lock-up and unencumbered box make it through to Barcap."

Do you remember, when you received this e-mail, scrolling down and reading this part of the chain?

A. Probably not. Just the sheer volume of mail I'm getting, my goals are here, the e-mail from Monty, which I think we have actually looked at several times in other exhibits.

Q. If you go two up the chain, Beth Rudofker sends an e-mail to Mr. Berkenfeld and copies you amongst others.

A. Yes.

Q. Is that the point at which you would become focused on this e-mail?

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A. Quite possibly, but again, the focus of this e-mail on this e-mail trail and the focus of what I am doing as the operations manager is trying to identify based on the set of criteria unencumbered securities. I don't know what was discussed in court. I have no idea. And it was, frankly, of little interest to me at that point.

Q. Miss Rudofker writes: "Alastair" -- and she spells your name wrong -- "and Neal are working on getting it ring-fenced/moved if needed."

Was that your understanding of what your marching orders were that weekend, to get the 15C3 assets and the unencumbered box ring-fenced and moved, if needed?

A. I couldn't technically do that. I could identify assets. I can't move anything over the weekend. I couldn't move cash at the weekend and I couldn't move securities related to it, so practically that's not possible, so my marching orders, as I said, was to identify the assets and provide that information, what are the assets that are currently unencumbered,

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and recalculate the C3.

Q. Did anyone ever tell you that cash had been removed from the deal between Lehman and Barclays?

A. That was my understanding of why 769 cash couldn't move, it had to be securities, but I think that was a post -- that was a post-weekend event. That's my recollection.

Q. Your recollection -- and the event you are talking about is you learning that the reason the transfer is 769, not some number in cash, is because, as you understood it, the terms of the deal was that no cash could go to Barclays?

A. That was after the weekend, as I thought 769 was a strange number.

Q. Okay. I think you have answered my question as to timing, but not actually my question.

Is it correct that your understanding was that the reason the deal between Barclays and Lehman was the transfer of \$769 million in Ginnie Mae securities rather than that number or some other number in cash

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was because cash had been excluded from the deal with Barclays?

A. I don't think -- I don't think I would have known that. I think I may have learned that subsequently. Around the time my understanding would have been securities needed to move or alternative value.

Q. From whom did you gain that understanding, sir?

A. It's going to have been from a similar set of people you see in my e-mails. It's going to be Ian, Martin or Paolo who would have informed me of that.

Q. So one of the three, to the best of your recollection, you can't remember which, would have told you that the reason the deal changed from I think it was a billion dollars -- does that sound right to you?

MR. SHAW: Objection. Foundation.

Q. I think there is probably a number of proper objections to that question.

Did you ever have an understanding that some other value different to \$769 million was to be transferred from Lehman's C3 account

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to Barclays?

A. Over the course of the weekend I had spent time, that conversation I had with Gerard around the billion dollars of cash at Wells Fargo, so I had a conversation about the mechanism to potentially move that. That's where my involvement was.

Q. So based on your conversation with Mr. LaRocco, you had understood that one component of the deal between Barclays and Lehman was to move a billion dollars of cash which was held in that Wells Fargo account which was that 15C3 account?

A. Correct, dependent, though, on determining there was an excess, and there would be alternative value.

Q. And when the deal is finally inked in the Clarification Letter, that number has changed, hasn't it? It's no longer \$1 billion; correct?

A. That is my understanding, yes.

Q. That number has changed from \$1 billion to \$769 million; correct?

A. Correct.

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Q. And just so we have got a clear record, I think we are there, but one more question, your understanding of the reason that the deal changed from \$1 billion in cash from Wells Fargo, assuming there is an excess in the C3 account, the reason it changed from that \$1 billion to 769 of Ginnie Mae securities was a belief that no cash was to go to Barclays under this deal?

MR. SHAW: Objection to form.

A. I don't have -- over the course of the weekend when the Clarification Letter was being produced, I have no understanding of that at all.

Q. I understand that, sir. That wasn't my question.

A. Post the event that is a possibility. It is not something I spent a huge amount of my time discussing.

Q. But you believe the basis of your knowledge, such as it is, comes from conversations with Mr. Lowitt, Mr. Tonucci and Mr. Kelly?

A. Most likely.

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(Exhibit 93 B, Management of the Unencumbered Asset Gap, marked for identification.)

(Recess was taken from 3:33 to 3:38.)

BY MR. OXFORD:

Q. Mr. Blackwell, you have in front of you what I have marked as Exhibit 93 B, which is a document -- a one-page document entitled -- two-page document entitled Management of the Unencumbered Asset Gap.

Do you recall seeing this document before?

A. When I was reviewing my e-mail, I think I saw something like this, if not this one.

Q. And when you say reviewing your e-mail, do you mean in preparation for this deposition?

A. Absolutely.

Q. Did that review refresh your recollection about the events that took place at the time this document was created?

A. I think this is the -- to the extent

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that it is consistent with the attempt to look for 1.95 billion of collateral. At that point that was a target. I don't know why that target was set, but that was the target. That target subsequently became irrelevant or raised.

Q. When did it become irrelevant or raised?

A. It was -- the target ceased to be -- over the course of the weekend it ceased to be about finding a specific number. It was what is available unencumbered collateral.

Q. And was that change in emphasis something that Mr. Lowitt communicated to you?

A. I believe so, yes.

Q. And again, just so we are clear, the idea then was to find as much unencumbered collateral as possible so that it could be transferred to Barclays?

A. No, that wasn't my understanding. It was to identify unencumbered collateral and determine what value -- determine what was a list of unencumbered securities so that a value could be applied to it. I don't know that the

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intent was to transfer all of it to Barclays. I think the terms of the APA state that the contents of the clearance boxes, i.e., the unencumbered securities in the clearance boxes would be transferred, so I think this is an earlier iteration of that.

Q. When you say the APA, Mr. Blackwell, the APA to me means the Asset Purchase Agreement that was signed on 16th of September. Is that a document you are referring to?

A. I'm not sure which date. Whatever legal agreement was in place. I've seen it subsequently, but my understanding is it was -- that was my understanding.

Q. And is it your understanding that whatever legal agreement this may be, the APA or something else, transfers in terms of unencumbered collateral, it transfers what to Barclays?

MR. SHAW: Asked and answered.

A. The contents of the -- the unencumbered assets in the clearing box.

Q. Clearance box was broader to your mind than DTC; correct?

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A. Yes, it would be.

Q. Was it -- I think you testified that it included Euroclear?

A. Correct.

Q. It also included Canadian exchanges?

A. Not exchanges.

Q. Sorry. Then I apologize for my layman's language. It included certain clearance corporations in Canada?

A. Correct.

Q. What else were you -- withdrawn.

Where else were you looking for unencumbered collateral, if anywhere else?

A. We were looking in the clearance depos of LBI, and I don't know all the numbers off the top of my head, but there are a list of depos that would fall under LBI and we would -- the teams would have looked in those depos and discounted some of them as not being depos, so the focus is really on, I think, three or four core pools of unencumbered securities.

Q. The document that I have marked as 93 B says: "The objective is to deliver to BCI \$195 billion as unencumbered collateral by COB

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Friday, September 19th." Do you see that?

A. I do.

Q. I read COB to be short for close of business. Do you read that also?

A. I do.

Q. Do you know why this document has as its objective the delivery of unencumbered collateral by the close of business on Friday, September 19th?

A. I actually don't, and I think somebody like Paolo would be better answering this question.

Q. Did you ever have an understanding that there was any effort to transfer unencumbered collateral to Barclays by close of business on Friday, September 19th?

A. Possibly. I don't recall that as a major part of the fact pattern that we were working towards at that time, but that's possible.

Q. Do you recall anything else about an effort to transfer collateral to Barclays on Friday, the 19th?

A. No.

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Q. Can you explain for me what your understanding is of a 15C3 account, just to make sure we are not passing each other when we are talking about it?

MR. SHAW: Objection. Asked and answered, and I think also the problem you are going to run into, again, is the use of 15C3 account.

MR. OXFORD: You are right. He did correct that earlier.

Q. Do you have an understanding of what the requirements are of SEC rule 15C33?

A. I'm at an expert on that rule.

Q. Okay. That's useful. That was my next question.

Do you have a general understanding of what the rule requires?

A. I have a general understanding what it requires.

Q. Can you tell me what that general understanding is?

A. The purpose of the calculation is to protect customer assets by calculating a figure and that figure is then -- it then requires you

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to deposit either cash or securities, whichever the security types are eligible, into an account for that customer's protection.

Q. And do you have an understanding of the various elements of the calculation --

A. No, I don't.

Q. -- that goes into the 15C3 calculation? You don't know?

A. I don't.

Q. Do you have any understanding of how secured loans are treated under 15C3?

A. No.

Q. Do you have any understanding of how overdrafts are treated under 15C3?

A. I don't.

Q. Do you have any understanding of how margin that is posted at the options clearing corporation is treated under 15C3?

A. I don't.

(Exhibit 94 B, e-mail dated 9-22-2008, marked for identification.)

Q. Okay, Mr. Blackwell, I have put in front of you a document marked Exhibit 94 B, which is a one-page e-mail that at the bottom

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is sent to you at 5:22 a.m. on Monday, the 22nd of September. Do you see that?

A. I do.

Q. The re line is 15C3, and do you see that Mr. Tonucci writes to Chris O'Meara, Ian Lowitt, it looks like a Russian version of Martin Kelly, I'm not quite sure why, to Robert Azerad and copying you? Do you see that?

A. I do.

Q. He says: "The final agreement was limited to 769 million, MM, of treasuries, so should be more comfortable to accomplish." Do you recall receiving that?

A. That is probably when I learned it was a different number.

Q. Just so we are clear, a different number, you are referring to your earlier testimony about a change in the business terms of the deal between Barclays and Lehman from \$1 billion of excess to 15C3 -- sorry -- from the 15C3 reserve to 769 million of treasuries?

A. When I became aware that it was 769 million of treasuries that was included in the agreement. I didn't know that the -- I didn't

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know that cash had definitively been included in any agreement.

Q. Did you know that it had definitively been excluded from any agreement?

A. All I knew at this point was 769 had been included.

Q. Do you think you had a subsequent conversation with Mr. Tonucci, Mr. Lowitt or Mr. Kelly about this topic?

A. Quite probably. It's probable that I did. Possible that I did and probably I did. (Exhibit 95, e-mail dated 9-21-2008, marked for identification.)

Q. Okay, Mr. Blackwell, I have marked as Exhibit 95 B what is a five-page e-mail with, I believe, two attachments entitled Forward Net Long Options - 9/18, which is sent from Francis Pearn to a distribution list, and you are copied, on Sunday, September 21st at 4:03 Eastern standard time.

If you could just take a moment to review that e-mail and tell me when you have had a chance to read it.

A. I've read it.

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Q. Do you recall receiving this e-mail, Mr. Blackwell?

A. No. This isn't something I was focusing on at all.

Q. Can you tell me what you were doing at 4:00 on Sunday afternoon of the 21st?

A. 21st is a Sunday?

Q. 21st is a Sunday. The deal closes on Monday, the 22nd. Where physically were you?

A. I am possibly at Weil's offices at that point. I am possibly at Weil's offices. I can't remember the timing exactly, but I was there for some of the day, so that's quite possible I was there.

Q. And your focus at that time was not on OCC. What was it on?

A. The major topics for me that day were, again, the unencumbered collateral and the 15C3 and the fails topic was raised again in the course of that day, so I was in a room away from where the deal was being discussed, but it was somewhere in Weil's offices with people, and questions were being put to me,

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information was coming back, so I was trying to carry out the task that I had been set from there and be available to Ian and anyone else that needed me.

Q. You testified earlier that someone called Alex Crepeau works for you; is that right?

A. That's correct, yes.

Q. Forgive me if I am mispronouncing his name. You said that he was responsible for client valuation and margin.

A. Correct.

Q. Does he have responsibility for margin at the OCC or is that a different functional area?

A. Yes, it's a different functional area.

Q. Do you have responsibility -- withdrawn.

Did you in your position at Lehman in September of 2008, did you have responsibility for the OCC?

A. Clearance of trades at the OCC, yes. Treasury were responsible for the margin,

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2 pledging margin to -- all of the exchange
3 margin, so the names mentioned here, Craig
4 Jones, Dan Fleming. I believe you are speaking
5 to Dan at some point.

6 **Q. Mr. Fleming has operational**
7 **responsibility for or had, rather, operational**
8 **responsibility for the margin at OCC during the**
9 **month of September '08?**

10 A. Correct.

11 **Q. Did he report to Mr. Jones or did**
12 **Mr. Jones report to him?**

13 A. Mr. Jones reported to Dan Fleming.

14 **Q. Are both of those individuals still**
15 **at Barclays?**

16 A. They are.

17 **Q. Do you know why the other Lehman**
18 **individuals would be copied on an e-mail about**
19 **this subject? Did they also have**
20 **responsibility for this area?**

21 A. I don't. There seem to be
22 regulatory people, regulatory finance people on
23 here, so I don't know what -- reading through
24 the e-mail trail, I don't know what the
25 ultimate genesis of this trail of work is.

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2 **Q. Which are the regulatory finance**
3 **people?**

4 A. Peter Tennison and Tony Stucchio,
5 and then there are product controllers in Frank
6 Pearn and Gerry Reilly.

7 **Q. Thank you. That's all I have for**
8 **that document.**

9 Can you have in front of you, it's
10 one of the big fat ones that Mr. Hine marked,
11 85 B. Can you open the page to the last
12 document in here which starts at Bates range
13 4607 and it's entitled at the top Exhibit B6
14 Source Schedule B Final, Schedule B. Do you
15 see that?

16 A. I do.

17 **Q. Do you recognize this document or**
18 **know what it is?**

19 A. I believe I know what it is.

20 **Q. Can you tell me what it is, please.**

21 A. I believe this is the unencumbered
22 collateral list.

23 **Q. When you say "the unencumbered**
24 **collateral list," can you be a little more**
25 **specific, please?**

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2 A. List of securities that were
3 unencumbered in the clearance box of Lehman
4 Brothers.

5 **Q. As of which date?**

6 A. I don't know the date. I'm not
7 going to say what date it was, but the schedule
8 being created over that weekend is my
9 understanding.

10 **Q. This might be a slightly vague**
11 **question. It's not intended to be in any way**
12 **tricky. I am just trying to get a sense of**
13 **whether you think this is in some way the**
14 **product of the work that your team did over the**
15 **weekend to identify unencumbered assets. Is**
16 **that a fair reading of the situation?**

17 A. I'm aware of a Schedule B that we
18 contributed to, so I'm assuming based on the
19 title of the document, but without a number to
20 compare it, it's difficult for me to --

21 **Q. It is in alphabetical order, but I**
22 **take your point.**

23 MR. SHAW: I will note that on
24 page 1, Schedule B6, which I think is what
25 you are looking at, has a title by it

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2 saying Monday Transfers Par Amount.

3 A. Right. So it's only one component
4 of Schedule B.

5 MR. OXFORD: Which page?

6 MR. SHAW: Third page of the
7 document after the first blue page. You
8 see there is F/N and exhibit.

9 MR. OXFORD: Yeah, I don't think
10 that's got anything to do with that. Okay.

11 A. So this document equals that 2.6
12 number?

13 **Q. Is that your understanding?**

14 A. Well, that's -- I don't know how
15 this is laid out, so I think that's a fair
16 point.

17 **Q. In compiling your list of**
18 **unencumbered assets, which may not be exactly**
19 **what is at Bates range 4607 and following, did**
20 **you or your team undertake any effort to take**
21 **out securities that were owned by Lehman's**
22 **customers?**

23 MR. SHAW: Objection. Vague as to
24 time.

25 **Q. At any point over the weekend when**

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you were combining a list of unencumbered assets that informs this Schedule B that we are looking at, did you or your team undertake any efforts to deduct from that list of CUSIPs any CUSIPs that were owned by Lehman customers?

MR. SHAW: Objection to form.

You can answer.

A. Of course. Unencumbered assets by definition are not customer assets, however, we had data within the -- we had data challenges, so some of the accuracy of the data was challenging. We applied a rationale, as I described before, around memo seg and memo to just take firm inventory, we excluded customer inventory and were -- we applied a methodology absolutely with the intent of protecting customer assets all the way through the process.

Q. Have you ever done any analysis to determine whether or not any customer assets ended up on Schedule B?

A. I think there were some analysis, that's possible. I can't -- there was definitely analysis on Schedule B and
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refinement of it, and it's possible, but I think if that happened, then there was a correction that took place.

Q. And who did that analysis?

A. I would imagine it's going to be the finance team and Jim Hraska in conjunction maybe with the regulatory ops team.

Q. Were you involved in that analysis?

A. Not doing the analysis. I think I have seen analysis over the months post bankruptcy.

Q. Were you involved in reviewing the analysis that was done by others?

A. It's possible. I can't confirm that a hundred percent, but it's possible I reviewed analysis. There was no intent to move customer assets.

Q. When you say there was no intent to move customer assets, do you include in your definition of customers Lehman affiliates?

A. I include the way these schedules were created or the way that the unencumbered assets were created was using 931 inventory accounts, which are firm positions, firm being
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LBI positions.

Q. Why do you use the date of 9/31?

A. I don't use the date. It's an account identifier. 931 is an account range.

Q. I understand.

A. So it's a distinct account range that we analyze, firm inventory accounts.

Q. Is it possible that Lehman's system showed that multiple parties, including customers of Lehman and Lehman itself, could have entitlement to the same security in the clearance box?

A. Yes, but there was a methodology applied to identify that.

Q. What was that methodology?

A. Again, using 931 accounts, taking the difference between the value of the customer -- taking a total value of the position in the box, taking only the component which was a -- taking only the component that was the trading book component, and if that trading book component was bigger than the total position, then there was an adjustment there as well, so absolutely we are taking the
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most conservative component and if there was any doubt in terms of total position and if the position in the box was less than the -- was less than the -- less than or equal to the customer position, we left that position there. So we didn't -- there was a methodology for each of the schedules that absolutely was designed to protect the customer assets.

Q. So I understand this, if, for example, there were a million shares of IBM and Lehman's books and records showed that there was an entitlement to those million shares by a customer and by Lehman, those under your methodology would have been excluded from your list of unencumbered assets?

A. Yes. That was the intent.

Q. Does the same apply to securities that Lehman's books and records show an entitlement to by not only Lehman, by which I mean LBI, the broker/dealer, but also a Lehman affiliate?

A. Jim would be a better person to explain exactly how he applied the methodology, but there was deliberate methodology applied to
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2 each one of the schedules.

3 **Q. Do you have any understanding that**
4 **on Schedule B that's attached to the APA a**
5 **number of the securities that were included in**
6 **the repo transaction and also on Schedule A to**
7 **the -- withdrawn.**

8 **Do you have any understanding that**
9 **Schedule B to the Clarification Letter includes**
10 **repo securities that are also on Schedule A to**
11 **the Clarification Letter?**

12 A. I didn't.

13 **Q. Do you have any reason to believe**
14 **that they should be on there?**

15 A. I don't have a view.

16 **Q. Did you follow up with**
17 **Mr. Macchiaroli after your meeting with him in**
18 **late September, early October 2008 about the**
19 **15C3 account?**

20 MR. SHAW: Asked and answered.

21 A. Yes, many times.

22 **Q. Did you follow up with him on the**
23 **question of your request that he authorize the**
24 **release of moneys from -- specifically**
25 **\$769 million of securities from Lehman's 15C3?**

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2 A. I don't think I did.

3 MR. SHAW: Asked and answered.

4 MR. OXFORD: I don't think I have
5 anything further at this time.

6 EXAMINATION BY

7 MR. DAKIS:

8 **Q. I think we met earlier off the**
9 **record. My name is Robert Dakis. I am from**
10 **the law firm of Quinn Emanuel Urquhart Oliver &**
11 **Hedges and I represent the Unsecured Creditors**
12 **Committee of Lehman Brothers Holdings, Inc.**

13 **I want to go back to the discussion**
14 **of collateral posted for the Fed and the**
15 **tri-party repos. Just a couple of things I**
16 **want to make sure that I understood from your**
17 **prior testimony about them.**

18 **Now, I believe you explained the**
19 **process was the clearing bank, either JPMorgan**
20 **Chase or Bank of New York depending on where we**
21 **were, would value the collateral that's posted**
22 **under the repurchase agreements.**

23 A. Yes.

24 **Q. Okay. And the clearance bank then**
25 **selected the collateral that's pledged under**

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2 **the repos?**

3 A. Under normal course of business,
4 that's correct, yes, they did. There are some
5 exceptions, but yes.

6 **Q. Were there any exceptions in the**
7 **week of September 15th, 2008?**

8 A. Not in the -- not that I'm aware of,
9 no.

10 **Q. Okay. Typically, in your**
11 **experience, when does the clearing bank inform**
12 **Lehman of the value it's assigning to the**
13 **collateral?**

14 A. I think that's part of the process
15 of closing the tri-party agreement in any one
16 day, so I don't know exactly what time, but
17 once the tri-party is closed down or tri-party
18 is set, we would understand what the value was.
19 I don't know when that is in the normal course
20 of business.

21 **Q. After the clearing bank assigns the**
22 **value and sets the securities that are going to**
23 **be transferred, does the buyer under a repo**
24 **have the discretion to refuse delivery of any**
25 **securities?**

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2 MR. SHAW: Objection. Foundation.

3 A. I don't know. On what basis? If it
4 falls outside of the agreed schedules.

5 **Q. Let me try to make it a little more**
6 **clear so that we can create some foundation for**
7 **this.**

8 **You understand that a repurchase**
9 **agreement typically has a buyer who buys**
10 **securities for some short-term subject to an**
11 **obligation to sell them back to the seller at**
12 **the maturity date of the repurchase agreement;**
13 **correct?**

14 A. I understand what a repo is.

15 **Q. Just trying to set it up for the**
16 **record.**

17 **The entity who buys under the**
18 **repurchase agreement typically sets a schedule**
19 **or at least under these repurchase agreements**
20 **it's your understanding that the buyer sets a**
21 **schedule of specific categories of securities**
22 **that it will accept.**

23 A. There are schedules attached to the
24 repo agreement that says these are the types of
25 collateral that are eligible for this

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2 agreement, yes.

3 **Q. In your experience, does the buyer**
4 **under these repurchase agreements have**
5 **discretion to refuse delivery of a security**
6 **that falls within those schedules?**

7 MR. SHAW: Objection to form.

8 A. I'm not aware.

9 MR. DAKIS: I am going to show you
10 an exhibit.

11 (Exhibit 96 B, e-mail dated
12 September 18, 2008, Bates stamped 77882,
13 marked for identification.)

14 **Q. I believe you have been handed a**
15 **document that's been marked as Exhibit 96.**
16 **This is an e-mail chain. The top e-mail in the**
17 **chain is an e-mail from you to Ian Lowitt dated**
18 **Thursday, September 18th at 8:56 p.m. GMT. In**
19 **the lower right-hand corner is a Bates number**
20 **77882.**

21 **Did I accurately describe that?**

22 A. 77882, yes.

23 **Q. I want to focus on in the fourth**
24 **e-mail in the chain, which is an e-mail from**
25 **Ian Lowitt to you on Thursday, September 18th,**

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2 **Ian asks you "are we still papering the 18**
3 **billion repo with Barclays or is that all part**
4 **of the same transfer."**

5 **Did you understand at the time what**
6 **Mr. Lowitt meant by that?**

7 A. Sorry, where are you looking at?

8 Oh, here. What I understood was that there was
9 a -- away from the Fed repo in the days
10 preceding I guess -- in the week between LBHI
11 and LBI's bankruptcy Barclays were extending
12 some -- were financing the organization through
13 some -- through a repo arrangement and that had
14 been rolled for the previous two nights, so
15 yes, my understanding was at that point it was
16 possible that that would get rolled again for
17 another night.

18 **Q. And just to be sure that I am clear,**
19 **this is a separate repo from the Fed repo?**

20 A. Absolutely, yes, it's a Barclays --
21 Barclays to Lehman repo directly.

22 **Q. Okay. And is it your understanding**
23 **that that repo rolled again on the night of the**
24 **18th?**

25 A. It didn't. At the end of the

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2 process of settling the Fed repo out to BONY, a
3 discussion was had at I think it was probably
4 about 2 in the morning, I think it was e-mails,
5 where the Barclays repo was not being rolled.
6 We thought it would be. And a HIC loan, I
7 think, was put on that -- held-in-custody loan
8 for \$15 billion, and at that time I -- when Jim
9 informed me of that, I tried to contact a
10 number of people at Barclays, Harry Harrison,
11 Gerard LaRocco, I think I tried to get ahold of
12 Ian and Paolo and I don't think I had any luck
13 in getting contact with anyone to tell them
14 that it happened, so the following day we
15 started the day with a -- I think there was
16 this HIC loan for 15.8 billion.

17 **Q. You said that there was a discussion**
18 **at about 2 in the morning about the Barclays**
19 **repo not rolling.**

20 A. Yes. At that point.

21 **Q. Who was on that discussion?**

22 A. When I say discussion, it was Jim
23 Hraska probably coming down to tell me or vice
24 versa. I can't recall exactly how. Or Monty.

25 **Q. And by "Monty" you mean?**

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2 A. Forrest.

3 **Q. And do you know who at Barclays made**
4 **the decision not to roll the repo?**

5 A. No.

6 **Q. Now, could you explain the HIC loan**
7 **to me. What was the purpose of the HIC loan?**

8 A. A HIC loan is a held-in-custody
9 loan, so it's a loan against the collateral in
10 the Lehman box.

11 **Q. Who provided the loan?**

12 A. Chase. JPMorgan Chase. I don't
13 believe the repo -- that the held in custody
14 was for the full value of what was in the box.

15 **Q. And I believe you testified earlier**
16 **that you were in a room with a bunch of Weil**
17 **lawyers at some point before the repo rolled**
18 **when you learned that the repo wasn't going to**
19 **roll. You said that it was reasonable that it**
20 **didn't roll?**

21 MR. SHAW: Objection.

22 Mischaracterizes prior testimony.

23 A. Yes, the timing is wrong there.

24 MR. DAKIS: Could we take a
25 two-minute break while I find it on

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2 Livenote so I can pull up the right
3 testimony.
4 MR. SHAW: Sure.
5 (Recess was taken from 4:19 to
6 4:20.)
7 BY MR. DAKIS:
8 **Q. Okay. Going back to my prior**
9 **question, you testified earlier in the day that**
10 **at some point you were in the room with Weil,**
11 **Ian and Paolo were outside --**
12 MR. DAKIS: Can you read it.
13 (Record read.)
14 **Q. Does that refresh your recollection**
15 **of your prior testimony?**
16 A. Yes.
17 **Q. Okay. Why did you think at the time**
18 **that it was reasonable Barclays wouldn't take**
19 **the loan?**
20 A. Because repos roll generally and
21 this repo was rolled over a 24-hour period.
22 At 2 in the morning there is no economic
23 outcome either way for any of the organizations
24 involved. A HIC loan unwinds instantly in the
25 morning. So if Barclays had taken a trade,
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2 A. I wouldn't know without looking at
3 the assets. I wouldn't know even looking at
4 the assets, frankly.
5 **Q. Fair enough. Could you just explain**
6 **what you mean by a value is system driven?**
7 A. What I was referring to was that the
8 systems would have had close of business Friday
9 prices in or whatever close of business price
10 had been fed in. When I say system driven, I
11 mean that's been sourced from a pricing venue,
12 so Bloomberg or Reuters, some other price feed
13 that the firm purchased.
14 **Q. Was there anyone at Lehman that was**
15 **responsible for ensuring that the systems were**
16 **updated regularly?**
17 A. Absolutely. It was a continuous
18 process every day and to manage stale pricing.
19 **Q. Who was the key person responsible**
20 **for this process?**
21 A. The systemic prices, to make sure
22 there was a price being fed in, that was done
23 by operations, by Alex Crepeau.
24 **Q. And you had said that it's a**
25 **possibility that these values were model**
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2 they would have delivered cash and got cash
3 straight back, so net net, nobody gained or was
4 harmed, so in effect the HIC loan was there to
5 protect Chase and put a back value entry into
6 their books to give their credit department
7 comfort. That would be my opinion.
8 **Q. Do you know how the Fed valued**
9 **collateral that was pledged to the Fed wire?**
10 A. I don't know how they did it. I
11 don't know what mechanism they used.
12 **Q. Can you please put Exhibit 85 B in**
13 **front of the witness again. It's one of those**
14 **large books.**
15 A. I have it.
16 **Q. Just a couple more questions. We**
17 **are almost done.**
18 **I believe when we were talking -- if**
19 **you could turn to page 4398. It's, I believe,**
20 **the third page.**
21 **We were talking about the values on**
22 **this first page earlier and I believe your**
23 **testimony was that the values were either**
24 **system driven or model driven and you didn't**
25 **know which. Is that correct?**
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2 **driven. Could you explain what you meant by**
3 **"model driven"?**
4 A. I'm not sure if they are included in
5 this list, but model-driven prices would be
6 that a trader or a comp team would create a
7 model. That model then -- or apply a model, an
8 existing model, to a product that prices it
9 based on a series of inputs.
10 **Q. And who at Lehman was responsible**
11 **for the models?**
12 A. In terms of testing the models, it
13 would be finance that would test the models, or
14 product controllers.
15 **Q. Who would be in charge of the**
16 **product controllers or finance?**
17 A. At the time I think it was Gerry
18 Reilly.
19 **Q. If you could please turn to the page**
20 **that starts 4402. At the top it says**
21 **Exhibit A-1, Source Barclays Financing**
22 **Collateral List, Barcops 9-20-2008, Fed**
23 **Settled.**
24 A. Yes.
25 **Q. Can you tell what this is a schedule**
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of based on the document or based on the actual
title?

A. Not really, no.

Q. Could you now turn to page 4607. I
know one of my colleagues spent a fair amount
of time on this, so I am not going to belabor
the point. I just want to ask one or two more
follow-up questions.

A. 46- --

Q. -07. It's in front of the last blue
sheet. Behind the last blue sheet. Sorry.

A. Schedule B.

Q. Now, this says it's Schedule B
Final. Would you be able to -- strike that.

Earlier in the day I think you
testified that Barclays didn't receive all of
the collateral it had bargained for under the
APA and the revised APA; correct?

A. Correct.

Q. Would you be able to point where on
Schedule B, which securities it didn't receive?

A. Absolutely not.

Q. Okay. Would you be able to tell us
which categories it didn't receive?

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A. I wouldn't without being able to run
reports in to produce it.

Q. Let me ask you the same question.
If I were to put Schedule A in front of you,
would you be able to point out which securities
on Schedule A Barclays didn't receive?

A. No, not without a certain comparison
document.

MR. DAKIS: I have nothing further.

(Time noted: 4:27 p.m.)

ALASTAIR BLACKWELL

Subscribed and sworn to before me
this day of 2009.

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C E R T I F I C A T E

STATE OF NEW YORK)

) ss.:

COUNTY OF NASSAU)

I, KRISTIN KOCH, a Notary Public
within and for the State of New York, do
hereby certify:

That ALASTAIR BLACKWELL, the witness
whose deposition is hereinbefore set
forth, was duly sworn by me and that such
deposition is a true record of the
testimony given by such witness.

I further certify that I am not
related to any of the parties to this
action by blood or marriage; and that I am
in no way interested in the outcome of
this matter.

IN WITNESS WHEREOF, I have hereunto
set my hand this 7th day August, 2009.

KRISTIN KOCH, RPR, RMR, CRR, CLR

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1

2 ERRATA SHEET FOR THE TRANSCRIPT OF:

3 Case Name: In re: Lehman Brothers

Dep. Date: August 7, 2009

4 Deponent: Alastair Blackwell

5 CORRECTIONS:

6 Pg. Ln. Now Reads Should Read Reason

7 _____

8 _____

9 _____

10 _____

11 _____

12 _____

13 _____

14 _____

15 _____

16 _____

17 _____

18 _____

19 _____

20 _____
Signature of Deponent

21 SUBSCRIBED AND SWORN BEFORE ME

22 THIS ____ DAY OF _____, 2009.

23 _____

24 _____

25 (Notary Public) MY COMMISSION EXPIRES: _____

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EXHIBIT B

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:

LEHMAN BROTHERS HOLDINGS INC., *et al.*,

Debtors.

Chapter 11

Case No. 08-13555

(Jointly Administered)

In re:

LEHMAN BROTHERS INC.,

Debtor.

Case No. 08-01420 (JMP) SIPA

STIPULATION REGARDING EXPERT DISCOVERY

WHEREAS, the following motions have been filed with the Court seeking, *inter alia*, modifications of (i) the Court's Order Under 11 U.S.C. §§ 105(a), 363, and 365 and Federal Rules of Bankruptcy Procedure 2002, 6004 and 6006 Authorizing and Approving (A) the Sale of Purchased Assets Free and Clear of Liens and Other Interests and (B) Assumption and Assignment of Executory Contracts and Unexpired Leases, dated September 20, 2008, or (ii) the Court's Order Approving, and Incorporating by Reference for Purposes of this Proceeding, an Order Authorizing the Sale of Purchased Assets and Other Relief in the Lehman Brothers Holdings Inc. Chapter 11 Proceeding; or both such Orders (individually or collectively, the "Sale Order"):

(1) Debtor's Motion for An Order, Pursuant to Fed. R. Civ. P. 60 and Fed. R. Bankr. 9024, Modifying the September 20, 2008 Sale Order and Granting Other Relief, dated September 15, 2009 ("LBHI's Motion");

(2) The Trustee's Motion for Relief Pursuant to the Sale Order or, Alternatively, for Certain Limited Relief Under Rule 60(b), dated September 15, 2009 ("Trustee's Motion"); and (3) Motion of Official Committee of Unsecured Creditors of Lehman Brothers Holdings Inc., et al., Pursuant to 11 U.S.C. §§ 105(a), Fed. R. Civ. P. 60(b), and Fed. R. Bankr. P. 9024, For Relief From Order Under 11 U.S.C. §§ 105(a), 363 and 365 and Federal Rule of Bankruptcy Procedure 2002,

6004 and 6006 Authorizing and Approving (A) Sale of Purchased Assets Free and Clear of Liens and Other Interests and (B) Assumption and Assignment of Executory Contracts and Unexpired Leases, dated September 20, 2008 (and Related SIPA Sale Order) and Joinder In Debtor's and SIPA Trustee's Motions for an Order Under Rule 60(b) to Modify Sale Order ("Committee's Motion");

(4) Motion of Lehman Brothers Holdings Inc., Pursuant to Fed. R. Civ. P. 60 and Fed. R. Bankr. P. 9024, Modifying The SIPA Sale Order and Joinder in Official Committee of Unsecured Creditors' Motion for Relief From SIPA Sale Order ("LBHI's Joinder"); and

(5) The Trustee's Motion to Join in Debtors' Motion for an Order Pursuant to Fed. R. Civ. P. 60 and Fed. R. Bankr. 9024, Modifying the September 20, 2009 Sale Order and Granting Other Relief ("LBI's Joinder," and collectively with the above-referenced motions, the "Rule 60 Motions").

WHEREAS, Barclays Capital Inc. ("Barclays") has issued discovery requests and third party subpoenas and plans to take certain depositions in connection with its intention to file an opposition to the Rule 60 Motions;

WHEREAS, Lehman Brothers Holdings Inc. ("LBHI"), James W. Giddens (the "Trustee"), as Trustee for the SIPA liquidation of Lehman Brothers Inc. ("LBI"), and the Official Committee of Unsecured Creditors of Lehman Brothers Holdings Inc., et al. ("Creditors Committee") have issued, or plan to issue, discovery requests and third party subpoenas and plan to take certain depositions in connection with their Rule 60 Motions;

WHEREAS, a Scheduling Order Concerning Certain Motions Filed by LBHI, the Trustee and Creditors Committee was entered on October 27, 2009 (LBHI Docket No. 5636, LBI Docket No. 1989) (the "Scheduling Order"), and

WHEREAS, as provided for in Fed. R. Civ. P. 26(a)(2)(B), counsel for LBHI, the Trustee, the Creditors Committee, and Barclays, in connection with the Scheduling Order the Rule 60(b) Motions, the adversary complaints, and all related proceedings herein, have agreed

have agreed to define and limit the material subject to discovery and disclosure with respect to expert opinion and testimony.

IT IS HEREBY STIPULATED AND AGREED, by and between the parties, through their undersigned counsel, that:

1. Subject to the provisions of paragraphs 2 and 3 below, any party that discloses the identity of any expert who is one retained or specially employed to provide expert testimony in this case or whose duties as a party's employee regularly involve giving expert testimony (hereinafter referred to as the "Expert"), shall be obligated to produce, in accordance with applicable scheduling order(s), only the following to all other parties in this action with respect to each identified Expert:

(a) A complete statement of all opinions the Expert will express and the bases and reasons for them (the "Expert Report");

(b) The data or other information relied upon by the Expert in forming the opinions set forth in his or her Expert Report;

(c) Any exhibits to be used as a summary of, or support for, the opinions set forth in his or her Expert Report (this shall not preclude any party from graphically presenting information or data by way of an exhibit or illustrative aid so long as the Expert Report specifically identified all the data and all the information presented in the exhibit or illustrative aid);

(d) The qualifications of the Expert, including a list of all publications authored by the Expert within the ten years preceding the disclosure and a list, to the best of the Expert's ability, of all matters in which the Expert has testified as an expert at a trial, hearing, or

deposition (regardless of whether the Expert was qualified as an expert) within the four years preceding the disclosure;

(e) The parties are obligated to exchange with each other any additional material supplied to the Expert subsequent to the issuance of the Expert Report to the extent the expert will rely upon such material in his or her testimony;

(f) A statement of total compensation paid or to be paid, and expenses reimbursed or to be reimbursed, to the Expert in connection with this matter, which total shall include, but not be limited to, payments made for the review and analysis of information, preparation of the Expert Report and any testimony in connection therewith; and

(g) A statement of the total number of hours billed by each testifying expert.

2. The following data, information and materials shall not be subject to discovery or disclosure (including by deposition questions):

(a) Drafts or markups of the Expert Report or any portions thereof, draft affidavits, or draft work papers; preliminary or intermediate calculations, computations or data; or other preliminary, intermediate or draft materials prepared by, for, or at the direction of a testifying expert witness;

(b) Documents constituting or reflecting communications between the Expert or any person working under the Expert's direction or the party disclosing such Expert, such party's counsel or any consultant that performed services at the direction of such party's counsel, except to the extent that such communications are an original source of facts upon which the Expert relied in forming the opinions;

(c) Notes created by or for the Expert or any person working under the Expert's direction that are not an original source of information relied upon by the Expert in forming the Expert's opinions;

(d) Nothing herein precludes a party from inquiring as to the identity of persons with whom the Expert has communicated in connection with his or her Expert engagement.

3. A party need not re-produce data or other information subject to disclosure pursuant to Paragraph 1 above that previously has been disclosed or produced in this action, provided that such party shall identify such data or other information for the other parties by Bates number or deposition exhibit number or page(s) of a deposition transcript.

4. A party need not disclose or produce data or information subject to disclosure pursuant to Paragraph 1 above that constitutes a treatise or other readily accessible public source materials, provided that the party identifies the treatise or readily accessible source material in sufficient detail so that it may be readily located. Upon request, the treatise or other source of materials shall be produced.

5. Nothing in this stipulation and order shall be construed to prevent or prohibit any party from asking an Expert questions at deposition or trial concerning the substance of the Expert's opinions, including without limitation any alternative theories, methodologies, variables or assumptions that the Expert may or may not have considered in forming the opinions or preparing the Expert Report.

6. No subpoena shall be served upon any Expert. As a condition of presenting the testimony of any Expert at trial, the parties shall identify Experts, produce any Expert Reports, and make their Experts available for deposition, at a time and place agreed upon by the parties,

in compliance with the Scheduling Order, and produce the data and other information called for under Paragraph 1 above (other than the Expert Report) on or before respective dates to be set forth in a separate stipulation or scheduling order.

7. For purposes of this stipulation, none of the following entities or their representatives shall be considered "Experts": Weil, Gotshal & Manges LLP, Hughes, Hubbard & Reed, LLP, Houlihan Lokey, Milbank, Tweed, Hadley & McCoy LLP, Deloitte & Touche LLP, Sullivan & Cromwell LLP, Cleary Gottlieb Steen & Hamilton LLP, Simpson, Thacher & Bartlett LLP, Alvarez & Marsal, FTI Consulting, or Lazard Ltd.

Dated: New York, New York
December 1, 2009

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EXHIBIT C

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

-----x

In Re:

Chapter 11

LEHMAN BROTHERS Case No. 08-13555(JMP)
HOLDINGS, INC., et al., (Jointly Administered)

Debtors.

-----x

PARTIALLY HIGHLY CONFIDENTIAL
VIDEOTAPED DEPOSITION OF DANIEL McISAAC

New York, New York

April 6, 2010

* * *(Pages 12-23 have been designated highly
confidential.)* * *

Reported by:

KATHY S. KLEPFER, RMR, RPR, CRR, CLR

JOB NO. 29428

Page 2	Page 3
<p>1 2 April 6, 2010 3 4 VIDEOTAPED deposition of DANIEL 5 McISAAC, held at offices of Boies 6 Schiller & Flexner, LLP, 575 Lexington 7 Avenue, New York, New York, before Kathy S. 8 Klepfer, a Registered Professional 9 Reporter, Registered Merit Reporter, 10 Certified Realtime Reporter, Certified 11 Livenote Reporter, and Notary Public 12 of the State of New York. 13 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p>1 2 3 A P P E A R A N C E S : 4 5 JONES DAY, LLP 6 Attorneys for Lehman Brothers, Inc. 7 222 East 41st Street 8 New York, New York 10017 9 BY: BART GREEN, ESQ. 10 11 BOIES, SCHILLER & FLEXNER, LLP 12 Attorneys for Barclays 13 10 North Pearl Street 14 Albany, New York 12207 15 BY: TRICIA J. BLOOMER, ESQ. 16 AMY L. NEUHARDT, ESQ. 17 LOUIS SMITH, ESQ. 18 HEATHER KING, ESQ. 19 - AND - 20 CLEARY GOTTlieb STEEN & HAMILTON LLP 21 Attorneys for Barclays 22 One Liberty Plaza 23 New York, New York 10006 24 BY: DAVID AMAN, ESQ. 25</p>
Page 4	Page 5
<p>1 2 A P P E A R A N C E S : (Cont'd.) 3 4 QUINN, EMANUEL, URQUHART, OLIVER & HEDGES, LLP 5 Attorneys for the Creditors Committee 6 51 Madison Avenue 7 22nd Floor 8 New York, New York 10010 9 BY: ERIC M. KAY, ESQ. 10 11 HUGHES, HUBBARD & REED, LLP 12 Attorneys for the SIPA Trustee 13 One Battery Park Plaza 14 New York, New York 10004 15 BY: NEIL J. OXFORD, ESQ. 16 AMINA HASSAN, ESQ. 17 FARA TABATABAI, ESQ. 18 19 20 21 22 23 24 25</p>	<p>1 D. McIsaac 2 THE VIDEOGRAPHER: This is the start 3 of the tape labeled number 1 of the 4 videotaped deposition of Daniel McIsaac in 5 the matter In re: Lehman. Today is April 6 6, 2010. The time is approximately 9:37. 7 My name is Michael Pineiro from TSG 8 Reporting, Inc. and I'm the legal video 9 specialist. The court reporter is Kathy 10 Klepfer, in association with TSG Reporting. 11 Will the court reporter please swear 12 in the witness. 13 * * * 14 DANIEL McISAAC, called as a 15 witness, having been duly sworn by a Notary 16 Public, was examined and testified as 17 follows: 18 EXAMINATION BY 19 MS. BLOOMER: 20 Q. Good morning, Mr. McIsaac. 21 A. Good morning. 22 Q. My name is Tricia Bloomer. I'm with 23 Boies, Schiller & Flexner and we represent 24 Barclays Capital in this matter. 25 A. Uh-huh.</p>

Page 6	Page 7
<p>1 D. McIsaac</p> <p>2 Q. Have you ever been deposed before?</p> <p>3 A. No, I have not.</p> <p>4 Q. Okay. Just to go over a few kind of</p> <p>5 ground rules that will help the day go a little</p> <p>6 bit more smoothly. I'll try to ask my questions</p> <p>7 clearly, and if you could allow me to finish a</p> <p>8 question before you begin your answer, and I'll</p> <p>9 try to do the same for you so that Kathy can</p> <p>10 take down everything that we say more easily.</p> <p>11 A. Okay.</p> <p>12 Q. If you can answer with verbal</p> <p>13 responses as opposed to, you know, nods or</p> <p>14 anything like that, that will help things.</p> <p>15 A. As opposed to (nods)--</p> <p>16 Q. And if you need a break at any point,</p> <p>17 please let me know and I'll try to accommodate</p> <p>18 you as soon as we can wrap up whatever topic</p> <p>19 we're on. Okay?</p> <p>20 If you don't understand any of my</p> <p>21 questions, please let me know and I'm happy to</p> <p>22 try to rephrase it for you.</p> <p>23 Okay. I'm going to show you the first</p> <p>24 exhibit, 684.</p> <p>25 (Exhibit 684, Expert Report of Daniel</p>	<p>1 D. McIsaac</p> <p>2 McIsaac, marked for identification, as of</p> <p>3 this date.)</p> <p>4 Q. Exhibit 684 is a copy of the expert</p> <p>5 report that you submitted on exchange-traded</p> <p>6 derivatives issues; is that right?</p> <p>7 A. Yes, it is.</p> <p>8 Q. Okay. Do you have any opinions that</p> <p>9 you didn't express in this report that relate to</p> <p>10 the issues --</p> <p>11 A. No, I don't believe so.</p> <p>12 Q. -- on exchange-traded derivatives?</p> <p>13 Okay.</p> <p>14 And what did you do today to prepare</p> <p>15 for your deposition?</p> <p>16 A. I reread my reports, I spoke to the</p> <p>17 trustees, and did have a slight conversation</p> <p>18 with the financial advisors for the Trustee.</p> <p>19 Q. Okay. And what financial advisors?</p> <p>20 A. Deloitte.</p> <p>21 Q. Okay. Anyone else that you spoke with</p> <p>22 in preparation?</p> <p>23 A. No.</p> <p>24 Q. Okay. Did you review any documents in</p> <p>25 preparation other than your report?</p>
Page 8	Page 9
<p>1 D. McIsaac</p> <p>2 A. The reports and some of the</p> <p>3 information that I would have relied on for my</p> <p>4 reports.</p> <p>5 Q. Do you remember any of the specific</p> <p>6 documents that you reviewed?</p> <p>7 A. I just glanced at everything that was</p> <p>8 there or looked at whatever was in my reliance</p> <p>9 material, would have been affidavits and the</p> <p>10 like in his report.</p> <p>11 Q. Okay. When were you retained by the</p> <p>12 Trustee's counsel to provide expert testimony</p> <p>13 concerning exchange-traded derivatives issues?</p> <p>14 A. Sometime in February, I believe.</p> <p>15 Q. In February. Do you remember whether</p> <p>16 it was -- so February would have been after Mr.</p> <p>17 Leitner submitted his expert report; is that</p> <p>18 correct, to your knowledge?</p> <p>19 A. I think it was, yes.</p> <p>20 Q. Okay. Can you describe generally for</p> <p>21 me what your background is that qualifies you to</p> <p>22 give expert testimony on exchange-traded</p> <p>23 derivatives issues?</p> <p>24 A. I was responsible for the preparation</p> <p>25 of seg and secured reports for the</p>	<p>1 D. McIsaac</p> <p>2 exchange-traded futures for approximately 20</p> <p>3 years. I worked closely with the regulators,</p> <p>4 the FTC, CME, on the issues regarding that, as</p> <p>5 well as the SEC on issues regarding the futures</p> <p>6 business.</p> <p>7 I did some reviews of acquisitions</p> <p>8 that one of my firms worked for -- that I worked</p> <p>9 for did as far as futures-related. As far as</p> <p>10 options, I was responsible for the preparation</p> <p>11 of the reserve formula for 15c3 for</p> <p>12 approximately 20 years, worked closely with our</p> <p>13 people in the areas regarding margin</p> <p>14 requirements at the OCC as they relate to the</p> <p>15 firm and the impact on the firm's calculations,</p> <p>16 and was the liaison for my firms with the</p> <p>17 regulators, both the OCC, CME, SEC, on all</p> <p>18 financial matters.</p> <p>19 Q. Okay. The first thing that you</p> <p>20 mentioned was segregated and secured reports.</p> <p>21 Can you describe those reports?</p> <p>22 A. Yes, that's the customer protection</p> <p>23 portion of the futures rules, CFTC, and it</p> <p>24 basically requires you or requires the firm to</p> <p>25 maintain all the customers' assets in a secure</p>

Page 10	Page 11
<p>1 D. McIsaac 2 place with no liens on them. 3 Calculation is done every day. You 4 start out by reviewing what the -- you owe the 5 customers, your liabilities to the customers, 6 and then determine where the assets are. And 7 you do a report every day and make sure you're 8 in compliance with the rules. 9 Q. Okay. Is that similar to the reports 10 that are required under the SEC's rules? 11 MR. OXFORD: Object to the form. 12 A. Similar in some respects because 13 they're both required to protect customers. 14 Different from the fact that, futures world, all 15 of the assets that the customers give you should 16 be locked up from day one. They're supposed to 17 be sent into a seg. account and kept in 18 segregation at all times. 19 The reserve requirement requires you 20 to do a calculation Mondays as of Friday based 21 on information that as of the close of business 22 Friday. So there is a difference in the way 23 it's done, but it has the same basic qualities 24 attached. 25 Q. Okay. You mentioned that you worked</p>	<p>1 D. McIsaac 2 on reviews of acquisitions? 3 A. Uh-huh. 4 Q. Can you -- and you said that was 5 futures-related acquisitions, I believe? 6 A. Yes. 7 (Pages 12 through 22 have been 8 designated highly confidential and will 9 continue on the next page.) 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>
Page 12	Page 13
<p>1 HIGHLY CONFIDENTIAL - D. McISAAC 2 Q. Can you describe how many acquisitions 3 did you review? 4 A. When I was at UBS, we acquired the 5 futures and options business of ABN Amro. 6 MR. OXFORD: And Trish, if I can just 7 note for the record that, given some 8 confidentiality concerns about this 9 information, we would like for the moment to 10 designate this section of the testimony as 11 highly confidential. 12 MS. BLOOMER: Absolutely. 13 A. Just not sure what -- what's public 14 knowledge, what's not public knowledge. 15 Q. Fair enough. Sure. 16 So, I'm sorry, I -- 17 A. We acquired the -- UBS acquired the 18 futures business from ABN Amro worldwide futures 19 business. I worked on the due diligence. I 20 worked on the preparation of our bid, although I 21 didn't work on the financial information, more 22 of a review, quick review of the aspects of it, 23 how it would have impacted our firm. Worked on 24 the due diligence, supervised the due diligence 25 in some respects of our financial professionals.</p>	<p>1 HIGHLY CONFIDENTIAL - D. McISAAC 2 Q. Uh-huh. 3 A. And was responsible for the worldwide 4 implementation from the finance standpoint of 5 bringing them onto our books and records. 6 Q. When did this transaction take place? 7 A. Dates are fuzzy. 2006, I believe. 8 Maybe 2005. 9 Q. Okay. Were there any other 10 transactions that you -- or, acquisitions that 11 you reviewed? 12 A. We also at one point in time bought 13 the prime broker business of ABN Amro also, 14 which included, you know, the options business 15 that they did for their customers, but it was 16 primarily a purchase of the customer business. 17 Q. Did it include proprietary options? 18 A. No. No sense in buying proprietary 19 options. You book your own. 20 Q. Any other transactions that you were 21 involved in reviewing? 22 A. We also bought -- this goes a little 23 bit further back, a little bit more fuzzy on 24 it -- the capital markets business of Charles 25 Schwab, which included their market-making</p>

Page 14	Page 15
<p>1 HIGHLY CONFIDENTIAL - D. McISAAC</p> <p>2 business in -- in equities and, in some</p> <p>3 respects, options.</p> <p>4 Q. And that would have been an</p> <p>5 acquisition of the proprietary portfolio as</p> <p>6 opposed to a customer?</p> <p>7 A. It would have been an actual entity as</p> <p>8 well as certain businesses that were bought into</p> <p>9 a different entity. We bought a whole entity</p> <p>10 that did some business as a clearer for some</p> <p>11 prime brokers as well as trading for them,</p> <p>12 market-making for them, and we bought in some</p> <p>13 market-making information into the firm</p> <p>14 separately.</p> <p>15 Q. Okay. Why is it that in that context</p> <p>16 it made sense to buy proprietary positions</p> <p>17 whereas it wouldn't make sense to buy them in</p> <p>18 the case of the prime brokerage acquisitions?</p> <p>19 A. We bought a whole entity.</p> <p>20 MR. OXFORD: Objection to the form.</p> <p>21 If you could just slow down a little a</p> <p>22 little bit to make sure that Trish gets her</p> <p>23 question finished before you answer and so</p> <p>24 that I have an opportunity to object.</p> <p>25 THE WITNESS: Sorry about that.</p>	<p>1 HIGHLY CONFIDENTIAL - D. McISAAC</p> <p>2 We bought a whole entity at the time.</p> <p>3 Q. Which time?</p> <p>4 A. With the Charles Schwab. So the</p> <p>5 entity had proprietary -- might have had options</p> <p>6 positions in it when we bought it.</p> <p>7 Q. Okay. Do you know whether it had</p> <p>8 options positions?</p> <p>9 A. I don't remember if it did or not at</p> <p>10 this point in time. It wouldn't have been a</p> <p>11 significant portion of it.</p> <p>12 Q. Do you remember the terms of the</p> <p>13 acquisition of the proprietary book?</p> <p>14 A. We bought the entity at a price, at a</p> <p>15 bid price, and whatever the net asset value of</p> <p>16 the entity would have been.</p> <p>17 Q. What year was the Charles Schwab</p> <p>18 transaction?</p> <p>19 A. Maybe 2004, 2005.</p> <p>20 Q. And the acquisition of the prime</p> <p>21 brokerage business of ABN Amro?</p> <p>22 A. I want to say around 2003, 2004,</p> <p>23 somewhere around there.</p> <p>24 Q. With respect to the UBS acquisition of</p> <p>25 ABN Amro in 2006, the first one that you</p>
Page 16	Page 17
<p>1 HIGHLY CONFIDENTIAL - D. McISAAC</p> <p>2 testified about?</p> <p>3 A. Uh-huh.</p> <p>4 Q. How long did it take to negotiate that</p> <p>5 deal from the day it was first conceived to the</p> <p>6 day it closed?</p> <p>7 MR. OXFORD: Object to the form.</p> <p>8 A. It probably took a couple of months.</p> <p>9 I don't remember exactly.</p> <p>10 Q. And you said that you were involved in</p> <p>11 the due diligence on that transaction?</p> <p>12 A. Yes.</p> <p>13 Q. Okay. Can you describe for me what</p> <p>14 the due diligence consisted of?</p> <p>15 A. We reviewed the financial information</p> <p>16 of their business, reviewed their models. I</p> <p>17 didn't review the models per se to determine the</p> <p>18 revenue streams. That was done by other groups.</p> <p>19 I reviewed from a financial standpoint</p> <p>20 and from a regulatory standpoint for both the</p> <p>21 assets we were buying from one entity as well as</p> <p>22 multiple other entities we were buying, I think</p> <p>23 I want to say 13 or 14 different assets and/or</p> <p>24 entities at -- purchased assets from different</p> <p>25 companies and/or entities and reviewed that and</p>	<p>1 HIGHLY CONFIDENTIAL - D. McISAAC</p> <p>2 directed our professionals that did a little bit</p> <p>3 deeper dive on due diligence.</p> <p>4 Q. Can you give me a sense of the</p> <p>5 relative size of the business that was acquired</p> <p>6 relative to the LBI transaction that you're</p> <p>7 testifying about in this case?</p> <p>8 A. Well, at the time of the acquisition,</p> <p>9 I believe ABN, with what UBS had at the time,</p> <p>10 made us probably the largest FCM in the country.</p> <p>11 Q. Okay. And in 2008 where did Lehman</p> <p>12 Brothers' business rank?</p> <p>13 MR. OXFORD: Object to the form.</p> <p>14 A. I don't know exactly where it was. I</p> <p>15 don't, looking at the numbers, I don't think it</p> <p>16 was very high.</p> <p>17 Q. You don't think it was very high.</p> <p>18 Okay.</p> <p>19 A. As far as, you know, seg and secured</p> <p>20 accounts. Seg and secured balances, that's how</p> <p>21 you usually rate it.</p> <p>22 Q. Other than reviewing models, what else</p> <p>23 did your due diligence consist of?</p> <p>24 MR. OXFORD: Object to the form.</p> <p>25 Misstates his testimony.</p>

<p style="text-align: right;">Page 18</p> <p>1 HIGHLY CONFIDENTIAL - D. McISAAC</p> <p>2 You can answer.</p> <p>3 A. I didn't review the models. Somebody</p> <p>4 else reviewed the models. I reviewed the</p> <p>5 financial information, the regulatory aspects,</p> <p>6 the impact that it would have on the firm, the</p> <p>7 controls, the system they were using, they were</p> <p>8 using a different system, to make sure we were</p> <p>9 familiar with it.</p> <p>10 Q. Did you review the accounts, the</p> <p>11 customer accounts of the companies you were</p> <p>12 acquired?</p> <p>13 A. No, the businesspeople along with some</p> <p>14 of their professionals reviewed the actual</p> <p>15 customer accounts to determine which customers</p> <p>16 they may not -- they wanted to take and which</p> <p>17 customers they didn't want to take.</p> <p>18 Q. Do you know how long they spent</p> <p>19 conducting that exercise?</p> <p>20 A. I think a lot of it was done prior to</p> <p>21 the final bid as far as, you know, first blush,</p> <p>22 on the larger clients. They probably spent a</p> <p>23 little extra time on the smaller clients.</p> <p>24 Q. Okay. And when you say a little extra</p> <p>25 time, you said that the entire process took a</p>	<p style="text-align: right;">Page 19</p> <p>1 HIGHLY CONFIDENTIAL - D. McISAAC</p> <p>2 couple of months --</p> <p>3 A. Some of the customers -- I'm sorry.</p> <p>4 Q. That's okay.</p> <p>5 You said that the entire process took</p> <p>6 a couple of months. How long would you say was</p> <p>7 spent on analyzing the customer base?</p> <p>8 A. I don't know how much time in</p> <p>9 particular. The main review for the customer</p> <p>10 base was that they cleared for some market</p> <p>11 makers and it wasn't a business, I think, that</p> <p>12 we wanted to be in, so it was carving out which</p> <p>13 ones you wanted to take and which ones you</p> <p>14 didn't want to take.</p> <p>15 Q. Okay. Did you do a -- were you</p> <p>16 involved in any type of credit check of the</p> <p>17 customers that you were -- that were in the --</p> <p>18 A. No.</p> <p>19 Q. -- accounts? Okay.</p> <p>20 And did you say that the UBS -- this</p> <p>21 first acquisition from 2006 that we discussed</p> <p>22 was an acquisition of just a customer business,</p> <p>23 or did it also include proprietary portfolio?</p> <p>24 A. It was just the customer business. We</p> <p>25 took over ABN's proprietary business to clear it</p>
<p style="text-align: right;">Page 20</p> <p>1 HIGHLY CONFIDENTIAL - D. McISAAC</p> <p>2 for them, so we didn't buy the positions. They</p> <p>3 maintained the positions and we were the</p> <p>4 clearing agent for them.</p> <p>5 Q. Okay. Were there any other</p> <p>6 transactions other than the three that we</p> <p>7 discussed so far that you were involved in</p> <p>8 reviewing?</p> <p>9 A. Just along the way we did some mergers</p> <p>10 and I was involved in the PaineWebber</p> <p>11 acquisition. I was involved in the merger we</p> <p>12 did with SBC, but more for maintaining the</p> <p>13 regulatory atmosphere, making sure we were</p> <p>14 complying with that.</p> <p>15 Q. Did you have any role in negotiating</p> <p>16 the terms of any of those transactions?</p> <p>17 A. I -- we had a separate group that did</p> <p>18 the negotiation that determined how much to pay</p> <p>19 for them. I was consulted by them for various</p> <p>20 issues but didn't negotiate the price.</p> <p>21 Q. Do you have any experience with</p> <p>22 proprietary options or futures trading</p> <p>23 strategies?</p> <p>24 A. I ran the regulatory group at UBS for</p> <p>25 15 years, so in doing the regulatory reports,</p>	<p style="text-align: right;">Page 21</p> <p>1 HIGHLY CONFIDENTIAL - D. McISAAC</p> <p>2 you had to understand what we were doing. As we</p> <p>3 went into a new business or a new process or new</p> <p>4 product, I had sign-off authority over it to</p> <p>5 make sure we were doing it accurately.</p> <p>6 Q. And what type of information would you</p> <p>7 require in that role about the trading strategy?</p> <p>8 MR. OXFORD: Object to the form.</p> <p>9 You can answer.</p> <p>10 A. We need to know what the desk was</p> <p>11 doing so that we could allocate it properly for</p> <p>12 capital purposes and for haircut purposes as</p> <p>13 well as to make sure we were producing it</p> <p>14 properly on our financial statements.</p> <p>15 At one point in time we started doing</p> <p>16 volatility trading and wanted to make sure that</p> <p>17 we had all the right information and that it was</p> <p>18 recorded properly, at the end of the day we had</p> <p>19 all the correct information.</p> <p>20 Q. Was there a particular name of the</p> <p>21 volatility trading positions that were acquired,</p> <p>22 do you know?</p> <p>23 A. No, we didn't acquire them. They were</p> <p>24 a new business that we instituted within the</p> <p>25 firm.</p>

<p style="text-align: right;">Page 22</p> <p>1 HIGHLY CONFIDENTIAL - D. McISAAC 2 (The non-highly confidential portion 3 will continue on the next page.) 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p style="text-align: right;">Page 23</p> <p>1 D. McIsaac 2 Q. Are you familiar with the term "VIX"? 3 A. VIX is a -- it's an index that's 4 traded over the -- I'm not sure if it's 5 over-the-counter or exchange-traded. I think 6 it's exchange-traded, but it's, if I remember 7 correctly, it's the volatility index of the 8 market. You're trading the volatility index. 9 Q. What's your understanding of the risk 10 profile of a VIX position in a volatile market? 11 MR. OXFORD: Object to the form. 12 Vague. 13 You can answer if you're able. 14 A. I'm not a risk man so I don't know. I 15 wouldn't venture to guess what the risk profile 16 is. We would normally use quants and people 17 like that to determine that information. 18 Q. Do you have an understanding of the 19 risk profile of any other types of 20 exchange-traded derivatives? 21 MR. OXFORD: Object to the form. 22 Vague. 23 A. Just from the standpoint of dealing 24 with them and understanding how the market 25 moves, not from a risk standpoint or a value at</p>
<p style="text-align: right;">Page 24</p> <p>1 D. McIsaac 2 risk standpoint. We would have other people 3 that were responsible for that. 4 Q. Is it fair to say that you're not an 5 expert on risk management in terms of 6 proprietary trading? 7 MR. OXFORD: Object to the form. 8 You can answer. 9 A. I'm not an expert on risk trading, on 10 risk management. Again, in our firms we would 11 have separate people that were responsible for 12 risk management processes and procedures. 13 Q. What types of risks would you be 14 knowledgeable about when analyzing an 15 exchange-traded derivatives acquisition? 16 A. Reputational risk, and, you know, if 17 we were taking on something, the impact it would 18 have on the firm's reputation; capital risk, 19 from a standpoint of how much capital would be 20 used and how it would impact the firm's capital 21 position; financial statement disclosure and 22 understanding that, and in general, the terms -- 23 general understanding of the business. So, in 24 such when we took over our futures and clearance 25 business, again, it's a customer-related</p>	<p style="text-align: right;">Page 25</p> <p>1 D. McIsaac 2 business, really not much risk involved. 3 Q. If there's not much risk involved, 4 what is -- why is it generally the case that a 5 transaction of this type would take two months 6 to negotiate? 7 MR. OXFORD: Object to the form. 8 A. It would take two months to finalize, 9 to set up the systems because you're going to 10 convert their information onto your systems, and 11 to, you know, finalize all the information you 12 need to finalize on it to do your due diligence 13 and to, you know, to finalize everything around 14 the purchase. 15 Q. And would that give you enough time to 16 analyze any problems with the books and records 17 of the selling entity? 18 MR. OXFORD: Object to the form. 19 You can answer. 20 A. It would, although, you know, your 21 first review would come up with anything 22 significant usually. 23 Q. Okay. And how long would the first 24 review take? 25 MR. OXFORD: Same objection.</p>

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<p>1 D. McIsaac</p> <p>2 A. Sometimes it could take a weekend.</p> <p>3 Q. And what's the longest that it could</p> <p>4 take?</p> <p>5 A. It may be a couple weeks, possibly.</p> <p>6 It's according to what you're doing and how --</p> <p>7 what other things you have to do at that point</p> <p>8 in time.</p> <p>9 Q. One of the things that you mentioned</p> <p>10 when you were describing your general areas of</p> <p>11 expertise was margin requirements at the OCC.</p> <p>12 Can you describe for me what your background and</p> <p>13 familiarity is in that regard?</p> <p>14 A. Well, from the firm's financial</p> <p>15 standpoint, you know, we needed to know what the</p> <p>16 margin requirements were, how they impacted the</p> <p>17 customer reserve formula, how they impacted the</p> <p>18 firm in general to know what margin was being</p> <p>19 called; the rules and regulations of the OCC,</p> <p>20 how it impacts additional margin requirements at</p> <p>21 points in time for firms, an understanding of</p> <p>22 that. I worked for a firm that was -- I don't</p> <p>23 think it's a secret -- was having some financial</p> <p>24 difficulties, so we did have a lot of</p> <p>25 conversations with the regulators over the</p>	<p>1 D. McIsaac</p> <p>2 margin requirements.</p> <p>3 Q. Okay. Can you describe generally what</p> <p>4 the problems were with the firm that you just</p> <p>5 described?</p> <p>6 A. We lost a lot of money. UBS lost a</p> <p>7 lot of money.</p> <p>8 Q. Lost a lot of money on what?</p> <p>9 A. On various trading strategies.</p> <p>10 Q. Would that include their trading</p> <p>11 strategies at the OCC?</p> <p>12 A. I do not believe so.</p> <p>13 Q. Okay. What was the context of your</p> <p>14 involvement with the OCC?</p> <p>15 A. As a regulator, a regulated entity, as</p> <p>16 our clearing org., they had a concern on our</p> <p>17 capital position and our ability to fulfill our</p> <p>18 obligations to it. I interfaced with them to</p> <p>19 keep abreast of what the firm was doing, how we</p> <p>20 were doing, and what we were -- what we were</p> <p>21 taking to maintain our capital base and keep</p> <p>22 them comfortable from a financial perspective.</p> <p>23 Q. Were you able to keep them</p> <p>24 comfortable?</p> <p>25 A. I believe so.</p>
Page 28	Page 29
<p>1 D. McIsaac</p> <p>2 Q. Did they ever threaten to liquidate</p> <p>3 the account?</p> <p>4 A. Not to my knowledge.</p> <p>5 Q. Did they ever increase the margin</p> <p>6 requirements because of the financial situation</p> <p>7 of the company?</p> <p>8 MR. OXFORD: Object to the form.</p> <p>9 A. As long as this is confidential, yes.</p> <p>10 Q. Do you know the extent to which they</p> <p>11 did that?</p> <p>12 A. 30 percent requirement, additional</p> <p>13 requirement. I think it was called Phase 3 or</p> <p>14 Level 3.</p> <p>15 Q. Did they ever refuse to allow the</p> <p>16 company to withdraw excess that happened to be</p> <p>17 in an account on any given day?</p> <p>18 MR. OXFORD: Object to the form.</p> <p>19 A. Not that I'm aware of.</p> <p>20 Q. Did you deal with the OCC in this</p> <p>21 regard with respect to customer accounts, firm</p> <p>22 or market maker accounts, or both?</p> <p>23 A. It was the overall relationship we had</p> <p>24 with the OCC.</p> <p>25 Q. So they were both?</p>	<p>1 D. McIsaac</p> <p>2 A. So it was firm and customer.</p> <p>3 Q. Do you have an understanding of what</p> <p>4 the OCC's rights are vis-a-vis clearing members</p> <p>5 when they have insecurities about</p> <p>6 creditworthiness?</p> <p>7 MR. OXFORD: Object to the form.</p> <p>8 A. I understand I think they have four</p> <p>9 levels for firms. Level 1 being no concerns; I</p> <p>10 believe their Level 2 is an alert status, where</p> <p>11 they pay a little bit more attention to how the</p> <p>12 firm is doing; Level 3 is where they raise the</p> <p>13 margin requirements by 30 percent; and I believe</p> <p>14 Level 4 is even more severe, where they raise it</p> <p>15 to 50 percent.</p> <p>16 Q. At what level do they start</p> <p>17 threatening to liquidate accounts?</p> <p>18 MR. OXFORD: Object to the form.</p> <p>19 A. I don't know.</p> <p>20 Q. You've never experienced that?</p> <p>21 A. I've never experienced that.</p> <p>22 Q. Do you know what level LBI was at in</p> <p>23 September of 2008?</p> <p>24 A. No, I do not.</p> <p>25 Q. Did you ask anyone that?</p>

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<p>1 D. McIsaac</p> <p>2 A. I may have asked, and I don't know if</p> <p>3 I ever got -- I don't believe I ever got an</p> <p>4 answer.</p> <p>5 Q. Do you have a sense of which level</p> <p>6 they would be at given what you have learned</p> <p>7 under the course of your studies in this case?</p> <p>8 MR. OXFORD: I'll object to the form</p> <p>9 of the question.</p> <p>10 MR. GREEN: Objection also.</p> <p>11 MR. KAY: Objection.</p> <p>12 A. I don't know.</p> <p>13 Q. What are the OCC's -- withdrawn. Do</p> <p>14 you have an understanding of how the OCC</p> <p>15 computes margin requirements as it relates to</p> <p>16 volatility?</p> <p>17 MR. OXFORD: Object to the form.</p> <p>18 A. Again, I'm not an expert in that area.</p> <p>19 I have somewhat of a knowledge that they are</p> <p>20 looking at the potential movement in the assets</p> <p>21 and look for margin to satisfy a market movement</p> <p>22 of a one- or two-day market swing based on some</p> <p>23 kind of theoretical pricing models.</p> <p>24 Q. Okay. You just said that you're not</p> <p>25 an expert in the area. What area were you</p>	<p>1 D. McIsaac</p> <p>2 referring to?</p> <p>3 A. In how they calculate the margin</p> <p>4 requirements.</p> <p>5 Q. Are the -- is the OCC's formula</p> <p>6 guaranteed to ensure that in the event of a</p> <p>7 liquidation there would not be a deficit in the</p> <p>8 margin account?</p> <p>9 MR. OXFORD: Object to the form.</p> <p>10 A. I don't think any calculation can</p> <p>11 ensure anything. I think their calculation is</p> <p>12 there for whatever they feel they need to</p> <p>13 address as far as the volatility of the firm</p> <p>14 and/or the marketplace.</p> <p>15 Q. Is it possible that a firm, a</p> <p>16 broker-dealer could have an excess in an account</p> <p>17 and nevertheless, upon a liquidation the</p> <p>18 following day, incur a cost that exceeds the</p> <p>19 amount that they had posted?</p> <p>20 MR. OXFORD: Objection to the form.</p> <p>21 A. I don't have a relevance to look at to</p> <p>22 determine that. I don't know. I've never seen</p> <p>23 it happen. I don't know.</p> <p>24 Q. You don't know if it's possible for</p> <p>25 the liquidation to cost more than what the</p>
Page 32	Page 33
<p>1 D. McIsaac</p> <p>2 margin posted?</p> <p>3 A. I would assume anything is possible.</p> <p>4 I don't know if it's ever happened or there's</p> <p>5 any, you know, history of it happening.</p> <p>6 Q. Would it be more or less likely to</p> <p>7 happen in a particularly volatile market based</p> <p>8 on what you know about how the OCC generally</p> <p>9 formulates their margin requirements?</p> <p>10 MR. OXFORD: Objection to the form.</p> <p>11 A. I guess in a volatile market anything</p> <p>12 is more possible to happen. It would be based</p> <p>13 on what their positions were at the time, were</p> <p>14 they long or short, were they short calls, short</p> <p>15 puts. It's, I guess, it's according to what the</p> <p>16 relevance is of their -- of their book.</p> <p>17 Q. You have your report there with you?</p> <p>18 A. Yes.</p> <p>19 Q. Could you turn to page 14, please, and</p> <p>20 could you review footnote 9?</p> <p>21 A. Yes.</p> <p>22 Q. Footnote 9 references an OCC Rule</p> <p>23 601(c), do you see that?</p> <p>24 A. Uh-huh. Yes, I do.</p> <p>25 Q. How long have you been familiar with</p>	<p>1 D. McIsaac</p> <p>2 this particular rule?</p> <p>3 A. In general terms, probably, you know,</p> <p>4 understanding how the OCC works, probably, in</p> <p>5 general terms, forever.</p> <p>6 Q. Okay.</p> <p>7 A. You know, but not specifically. I've</p> <p>8 never had to deal with it in specifics.</p> <p>9 Q. The rule states that the margin</p> <p>10 requirement shall be the amount of margin assets</p> <p>11 that must be held in the account such that the</p> <p>12 minimum expected liquidation value of the</p> <p>13 account after excluding positions covered by</p> <p>14 deposits in lieu of margin, measured at</p> <p>15 confidence levels as may be selected by the</p> <p>16 corporation from time to time, will not be less</p> <p>17 than zero.</p> <p>18 Do you have an understanding of what</p> <p>19 the phrase "minimum expected liquidating value"</p> <p>20 means?</p> <p>21 MR. OXFORD: Objection to the form.</p> <p>22 Misstates the document.</p> <p>23 A. "Minimum expected liquidating value" I</p> <p>24 believe is the minimum value of the account</p> <p>25 after it liquidates.</p>

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<p>1 D. McIsaac</p> <p>2 Q. Is it the minimum value or the minimum</p> <p>3 expected value?</p> <p>4 A. Minimum expected value upon</p> <p>5 liquidation.</p> <p>6 Q. Okay. And expected by whom?</p> <p>7 A. I'm assuming this is an OCC rule, so</p> <p>8 it's expected by them.</p> <p>9 Q. Okay.</p> <p>10 A. Based on the confidence level they</p> <p>11 select.</p> <p>12 Q. Do you have any understanding of what</p> <p>13 their confidence level would be based on?</p> <p>14 A. No, I do not.</p> <p>15 Q. In a market in which there's more than</p> <p>16 average volatility, would you agree that it's</p> <p>17 more likely that their margin requirement will</p> <p>18 be insufficient to cover the liquidating cost of</p> <p>19 an account?</p> <p>20 MR. OXFORD: Object to the form.</p> <p>21 A. Based on the fact that I have never</p> <p>22 heard of them liquidating anybody and making a</p> <p>23 call to the rest of the members, I don't know if</p> <p>24 it's ever been proven that that's the case.</p> <p>25 Q. Do you agree that there's more of a</p>	<p>1 D. McIsaac</p> <p>2 risk of that being the case in a particularly</p> <p>3 volatile market?</p> <p>4 MR. OXFORD: Object to the form.</p> <p>5 A. Could you repeat your question?because</p> <p>6 it was sort of one question, then another?</p> <p>7 Could you --</p> <p>8 Q. Sure. In a market in which there's</p> <p>9 more than average volatility, would you agree</p> <p>10 that it's more likely that their margin</p> <p>11 requirement will be insufficient to cover the</p> <p>12 liquidating cost of an account?</p> <p>13 MR. OXFORD: Same objection.</p> <p>14 A. More likely than what?</p> <p>15 Q. Than in an average -- than in a market</p> <p>16 with average volatility.</p> <p>17 A. Okay, so if you're saying in a market</p> <p>18 that has extreme volatility, could their</p> <p>19 calculations be more likely to -- to not be</p> <p>20 correct than in a market that has average</p> <p>21 volatility? I guess the answer would be yes.</p> <p>22 Q. Okay. Are you aware that on Friday,</p> <p>23 September 19, 2008, the OCC refused to allow LBI</p> <p>24 to withdraw margin from its account that was in</p> <p>25 excess of the requirements it had published that</p>
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<p>1 D. McIsaac</p> <p>2 morning?</p> <p>3 A. I have heard inferences to that. I</p> <p>4 might have seen an e-mail to that.</p> <p>5 Q. Have you -- in your experience, has</p> <p>6 the OCC ever, to your knowledge, refused a</p> <p>7 clearing member the ability to withdraw excess</p> <p>8 from its account?</p> <p>9 A. To my knowledge, I don't think so that</p> <p>10 I'm aware of, but I'm sure if they were</p> <p>11 concerned with other firms, they might have done</p> <p>12 the same with other firms. It was a time and</p> <p>13 place in the marketplace.</p> <p>14 Q. Is it possible that the OCC made that</p> <p>15 decision because it was concerned that the</p> <p>16 market may move away from the positions to the</p> <p>17 extent that the margin requirements were not</p> <p>18 going to be sufficient to cover the cost of a</p> <p>19 liquidation?</p> <p>20 A. I can't determine what OCC's thought</p> <p>21 process was. Maybe they knew there was an</p> <p>22 impending sale. I don't know what the rationale</p> <p>23 was on their part.</p> <p>24 Q. What is the OCC's overall goal in</p> <p>25 setting a margin requirement?</p>	<p>1 D. McIsaac</p> <p>2 MR. OXFORD: Object to the form.</p> <p>3 A. Again, I'm not there, but I believe</p> <p>4 their overall goal is to make sure that there's</p> <p>5 adequate margin so that the entities that</p> <p>6 they're clearing for can be or could be</p> <p>7 liquidated at no cost to the rest of the</p> <p>8 members.</p> <p>9 Q. Can you turn to page 29 of your</p> <p>10 report. In paragraph 70, you say here that</p> <p>11 "Barclays' acquisition balance sheet recognizes</p> <p>12 a day one gain of \$1.19 billion relating to</p> <p>13 options." Do you see that?</p> <p>14 A. Yes.</p> <p>15 Q. And in the next sentence, you say that</p> <p>16 "this appears to be comprised of approximately</p> <p>17 \$2.29 billion of margin at the OCC less \$1.1</p> <p>18 billion of liabilities at the OCC." Do you see</p> <p>19 that?</p> <p>20 A. Yes.</p> <p>21 Q. Would you agree that if Barclays had</p> <p>22 not received the \$2.29 billion of margin at the</p> <p>23 OCC, Barclays would have recorded a loss of \$1.1</p> <p>24 billion on these options on its acquisition</p> <p>25 balance sheet?</p>

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1 D. McIsaac
2 A. I'm not sure. From my understanding
3 the proprietary assets, proprietary options at
4 OCC were positive by about 300 million. I
5 believe the short side was an affiliate that
6 cleared through the OCC through -- that was a
7 subordinated affiliate. So I believe the assets
8 they were buying were positive or net asset
9 value of about 300 million as well as they were
10 part of a larger portfolio of assets that they
11 were buying.
12 So they might have -- I don't see
13 where the loss came from because I believe it
14 was affiliates positions, but even if there was,
15 it would be offset by possibly gains in other
16 areas.
17 Q. Can you describe the larger portfolio
18 of assets that Barclays was buying?
19 A. I believe there was a repo that had
20 significant value of assets for which they
21 forgave a liability of Lehman's in lieu of the
22 assets.
23 Q. Okay. Were they long positions or
24 short positions?
25 A. Long positions.

1 D. McIsaac
2 Q. Were there any short positions
3 undertaken on the fixed equity side?
4 A. I don't believe so.
5 Q. Were there short equity positions at
6 Lehman outside of that repo?
7 MR. OXFORD: Object to the form.
8 A. I don't know. I would assume there
9 might have been, but I don't know.
10 Q. Do you recall reviewing the Asset
11 Purchase Agreement that the parties signed on
12 September 16?
13 A. Yes.
14 Q. Do you recall what the amount of long
15 and short positions was that was described in
16 that document?
17 A. I believe it was 70 billion long, 69
18 billion short.
19 Q. Do you have any reason to believe that
20 the 69 billion short didn't still exist by
21 Monday, the 22nd of September, 2008?
22 A. I have no reason to know what the
23 number was at that point in time.
24 Q. Is it fair to say that those ceased
25 being part of the transaction?

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1 D. McIsaac
2 A. Those short positions, yes.
3 Q. Okay. And the long positions still
4 were coming over?
5 MR. OXFORD: Object to the form.
6 Q. Is that correct?
7 A. My understanding of the Clarification
8 Letter and the APA, yes.
9 Q. And do you understand, generally, the
10 nature of the agreement with respect to the
11 assets that were pledged under the Fed repo?
12 A. Could you be a little more specific?
13 I'm not sure what your question is.
14 Q. Sure. Was there a give and take with
15 respect to the long positions that were pledged
16 at the Fed repo?
17 MR. OXFORD: Object to the form.
18 MR. KAY: Same objections.
19 A. What's give and take? I just don't
20 know what you mean by that. If you could --
21 Q. Sure. What is your understanding of
22 the -- of the transaction as it related to the
23 assets in the Fed repo?
24 MR. OXFORD: Object to the form.
25 A. My understanding is that the Fed was

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2 providing Lehman with liquidity, somewhere 45,
3 50 billion dollars, I don't remember exactly,
4 and that was secured by assets of I think I read
5 somewhere about 4 to 5 billion dollars extra in
6 assets.
7 I believe Barclays assumed that repo.
8 I believe they took over most of the assets,
9 possibly, not all of them, and those were long
10 assets that they -- that was part of the
11 purchase agreement at the end.
12 Q. Do you have any -- did you study the
13 pleadings in this case that related to the Fed
14 repo transaction?
15 MR. OXFORD: Object to the form.
16 A. I don't believe so. I don't think I
17 did.
18 Q. Okay. Are you aware that Barclays had
19 expressed concern over the value of the assets
20 in the Fed repo relative to the amount of cash
21 it was advancing?
22 A. No. If I didn't read the pleadings, I
23 probably don't know that.
24 Q. You mentioned that there were
25 affiliate positions that you believe were part

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<p>1 D. McIsaac 2 of the account that you referenced liabilities 3 for in paragraph 70 of your report? 4 A. Uh-huh. 5 Q. Can you describe generally what your 6 understanding was with respect to the transfer 7 of those positions to Barclays? 8 MR. OXFORD: Object to the form. 9 Misstates his testimony. 10 A. There was an affiliate that signed a 11 subordination agreement between them and LBI, 12 and I believe the OCC is a party to that, 13 whereby they would allow their securities to be 14 commingled with the firm's securities. It's an 15 advantage usually for the firm because it gets 16 them better margin rates, possibly. And it was 17 my understanding it was short positions of the 18 affiliate. 19 From my understanding of reading most 20 of the stuff I've read, I didn't -- I do not 21 believe that Barclays was taking over any 22 affiliates accounts. 23 Q. Okay. I'm showing you an exhibit 24 that's been marked as Exhibit 51. Do you 25 recognize this document?</p>	<p>1 D. McIsaac 2 A. Yes, it's the Transfer and Assumption 3 Agreement. 4 Q. And did you review this in connection 5 with preparing your report? 6 A. Yes. 7 Q. Do you see in the first "whereas" 8 clause on the first page where it says, "Lehman 9 is a clearing member of OCC and carries one or 10 more accounts (nos. 74, 84 and 273)"? 11 A. Yes, I do. 12 Q. And it defines that as "Account," with 13 a capital A? 14 A. Yes. 15 Q. Okay. Is it your understanding that 16 the term "account" there encompasses the 17 accounts that you referenced in relation to 18 paragraph 70 of your report? 19 A. I believe they use the same accounts, 20 yes. 21 Q. If you go down to paragraph 1(b) on 22 that same page, do you see where it says, 23 "Barclays hereby accepts such sale, assignment, 24 and transfer of the Account, agrees to be bound 25 by and receive the benefits of maintaining such</p>
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<p>1 D. McIsaac 2 Account, and assumes and agrees to perform each 3 obligation arising out of or to be performed 4 with respect to the activity in the Account"? 5 A. Yes. 6 Q. Do you understand that to mean that 7 Barclays assumed settlement responsibility for 8 all of the positions in all of the Lehman's 9 accounts at the OCC? 10 A. Yes. I think Barclays assumed 11 clearance and settlement of all the accounts 12 there. 13 Q. Okay. And what is the basis for your 14 understanding that Barclays -- withdrawn. 15 Is it fair to say that Barclays was 16 responsible for settling and clearing the 17 positions in the 074F and 074M accounts 18 regardless of whether they were held on the firm 19 account on behalf of an affiliate? 20 A. Yes, they would have been responsible 21 for settling and clearing and liquidating if 22 need be. 23 Q. Does that mean that on short positions 24 that were held on behalf of affiliates Barclays 25 would have to advance any securities that were</p>	<p>1 D. McIsaac 2 owed or advance any cash that was owed on an 3 exercise or an assignment of one of those 4 positions? 5 MR. OXFORD: Object to the form. 6 A. It means they would have either 7 settled the transactions if they were called or 8 closed them out. 9 Q. You say in your report that Barclays 10 charged back the LBI estate for the cost of 11 closing out affiliate positions. Let me give 12 you the page reference. 13 If you turn to pages 26 and 27 of your 14 report, paragraph 66 on page 26, you say, 15 "Barclays did not assume any risk with respect 16 to LBI affiliate customers' futures positions." 17 Oh, wait. I'm sorry. Let me get to 18 the options positions because that's what we're 19 talking about now. 20 MR. OXFORD: I think it's probably 21 page 21, Trish, you're looking for. 22 MS. BLOOMER: Thank you. 23 Q. You say in paragraph 51 that Barclays 24 has charged back the LBI estate for the cost of 25 maintaining and closing out those positions.</p>

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<p>1 D. McIsaac 2 You see that? 3 A. Yes. 4 Q. What is -- is the Dziemian declaration 5 that you cite here the only factual basis for 6 that statement? 7 A. I believe there's a schedule that I 8 saw that had those amounts in it. I'm not sure 9 if it came from Dziemian's declaration or where 10 else it might have come from, but his 11 declaration did say they were charging them 12 back. 13 MS. BLOOMER: I think maybe this is a 14 good time to take a first break and that way 15 I can pull an extra document that I missed. 16 MR. OXFORD: Okay. That would be 17 great. Thanks. 18 THE VIDEOGRAPHER: The time is 10:25. 19 We're going off the record. 20 (Recess.) 21 THE VIDEOGRAPHER: This is the start 22 of tape number 2. The time is 10:43. We 23 are back on the record. 24 BY MS. BLOOMER: 25 Q. Welcome back, Mr. McIsaac.</p>	<p>1 D. McIsaac 2 A. Thank you. 3 Q. I want to show you a document -- I 4 think we're going to have to mark this. It's 5 already been marked, but I don't have the marked 6 copy. So, Exhibit 685. 7 (Exhibit 685, Declaration of Daniel 8 Dziemian, marked for identification, as of 9 this date.) 10 Q. I'm showing you a document that's 11 marked as Exhibit 685, Mr. McIsaac. We were 12 looking before the break at paragraph 51 of your 13 expert report in which you state that Barclays 14 has charged back the LBI estate for the cost of 15 maintaining and closing out those positions. 16 You see that? 17 A. Yes. 18 Q. Okay. And which positions precisely 19 were you referring to in this statement? 20 A. Let me just see. I guess it would be 21 non-PIM customer transactions. 22 Q. Okay. Would that include affiliates? 23 A. Yes. 24 Q. And you cite the Dziemian declaration 25 at paragraphs 12 and 14 through 16 as the</p>
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<p>1 D. McIsaac 2 support for that statement. 3 Can you review those paragraphs and 4 tell me where in this declaration it suggests 5 that Barclays charged back the LBI estate for 6 the cost of maintaining and closing out the 7 affiliate positions? 8 A. I presume it's in paragraph 14. 9 Q. And what portion of the paragraph? 10 A. The fourth or fifth line down, "The 11 net effect of the close-out and liquidation of 12 all positions and equities relating to the 074C 13 LBI Affiliate Options on the LBI Bridge Account 14 is a net receivable from LBI to Barclays in the 15 amount of \$80 million." 16 Q. And are you assuming in that statement 17 that a net receivable on the LBI Bridge Account 18 is the equivalent of charging back the estate 19 for the cost of closing out those options? 20 MR. OXFORD: Objection to the form. 21 A. If you record a receivable, I assume 22 you think somebody's going to pay you for that, 23 yes. 24 Q. Do you understand what the purpose of 25 the LBI Bridge Account was?</p>	<p>1 D. McIsaac 2 A. I'm -- by the words there, I assume 3 it's a bridge account between two entities or 4 between two systems. On one side you book -- 5 you may book the receivables. On the other side 6 you book the payables. 7 Q. Okay. If you look at paragraph 13, it 8 says, "The bridge accounts were necessary to 9 account for the fact that the settlement bank 10 and the settlement depository as of 11 approximately September 23, 2008, were switched 12 to Barclays while the accounts of these 13 customers and affiliates remained with LBI." 14 You see that? 15 A. Yes. 16 Q. Is it possible that the bridge account 17 was necessitated by accounting concerns and the 18 need to process trades on both sides on a system 19 as opposed to because Barclays was charging back 20 the estate for any of those costs? 21 A. Could you repeat -- 22 MR. OXFORD: Object to the form. 23 A. Sorry. 24 Could you repeat the last part? 25 Because I don't understand the part where you</p>

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<p>1 D. McIsaac 2 talked about charge back, the way you said it. 3 Q. Okay. Is it possible that the bridge 4 account was necessitated by accounting concerns 5 and the need to process trades on both sides on 6 a system as opposed to because Barclays was 7 charging back the estate for any of those costs? 8 MR. OXFORD: Same objection. 9 MR. GREEN: Objection. 10 A. If they were booking them on both 11 sides, then wouldn't they be charging them back? 12 If they were taking responsibility for them, 13 then they would have written them off to an 14 expense, not a receivable. 15 Q. Okay. Did you review Gary Romain's 16 deposition testimony in preparing your report? 17 A. I believe I read it, yes. 18 Q. Okay. I'm going to mark this exhibit 19 as Exhibit 686. 20 (Exhibit 686, Deposition of Gary 21 Romain, marked for identification, as of 22 this date.) 23 Q. You have in front of you Gary Romain's 24 deposition testimony. Can you turn to page 141, 25 please?</p>	<p>1 D. McIsaac 2 A. Do you want your copy back? 3 Q. Pardon? I realize it's yellow. 4 A. That's fine. 5 Q. I wanted to direct you to that portion 6 of it, so it's fine. Thank you. 7 Do you see the portion that's boxed in 8 that deposition transcript? 9 A. Yes. 10 Q. And do you see where Gary Romain says 11 that "we had written off 100 percent of it and 12 in the acquisition accounting, but it's been 13 recorded as an expense, an expense being a 14 deduction from the negative goodwill on the 15 acquisition"? 16 A. Let me read it, please. 17 MR. OXFORD: And Mr. McIsaac, to the 18 extent you feel necessary to answer the 19 question, you should read as much as you 20 need of Mr. Romain's testimony. 21 Q. In fact, perhaps it would be better 22 for you to start on page 139 at the bottom of 23 the page, line 22, when Mr. Romain starts 24 describing -- 25 A. Uh-huh.</p>
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<p>1 D. McIsaac 2 Q. -- the accounting treatment on the 3 affiliate options that we've been discussing. 4 MR. OXFORD: Thank you, Trish. 5 A. Okay. I've read it. Can you repeat 6 your question? I'm sorry. 7 Q. Sure. Do you see in on page 140 in 8 the answer provided on line 7 through 15 Gary 9 Romain says, "So if you look at the payments 10 made to close out positions and for some OCC 11 related-costs, the total payment made by 12 Barclays was \$104 million and the receivable, 13 which might otherwise have been recognized, has 14 been written off"? 15 A. Yes. 16 Q. Did you read that in preparing your 17 report? 18 A. I probably read this, this deposition, 19 so yes, I probably read this, right. 20 Q. Is this inconsistent with your 21 understanding that Barclays charged back the LBI 22 estate for the cost of closing out affiliate 23 positions? 24 A. My understanding, and even from 25 reading here, it looks like they recorded a</p>	<p>1 D. McIsaac 2 receivable which was charging them back, they 3 didn't take them to P&L directly, and eventually 4 wrote them off. Maybe they deemed them 5 uncollectable, I'm not sure why, but I don't 6 know why you would set them up as a receivable 7 if you were going to write them off if you 8 didn't -- if you were taking responsibility from 9 the start. So Mr. Dziemian basically said that 10 they were being set up as receivables. 11 Q. Would you agree that Barclays incurred 12 a cost of \$104 million according to the record 13 facts that you've see in this case on the 14 affiliate options positions in the 074C account? 15 MR. OXFORD: Object to the form. 16 A. I agree that that's what Mr. Romain 17 says in his deposition. I have not seen 18 anything to show me what the numbers are or had 19 anybody provide information, but that's what he 20 says here. 21 Q. Do you have any reason to dispute or 22 doubt the fact that Barclays incurred costs in 23 closing out these positions? 24 A. No, I do not. 25 Q. Do you have any reason to believe that</p>

<p style="text-align: right;">Page 54</p> <p>1 D. McIsaac</p> <p>2 Barclays collected the amounts that it incurred</p> <p>3 in closing out affiliate positions from the LBI</p> <p>4 estate?</p> <p>5 A. No, I do not.</p> <p>6 Q. Do you believe that Barclays did</p> <p>7 collect the costs from the LBI estate that it</p> <p>8 incurred in closing out --</p> <p>9 A. I don't know if they did or didn't.</p> <p>10 Q. -- the LBI affiliate positions?</p> <p>11 Please allow me to finish the</p> <p>12 question.</p> <p>13 -- in closing out the LBI affiliate</p> <p>14 positions?</p> <p>15 A. I don't know if they collected or not</p> <p>16 or presented a bill or not.</p> <p>17 Q. Is it your general understanding that</p> <p>18 entities write off amounts that they were able</p> <p>19 to collect?</p> <p>20 MR. OXFORD: Object to the form.</p> <p>21 A. No. You usually write them off when</p> <p>22 you think there might be a -- you may not be</p> <p>23 able to collect them.</p> <p>24 Q. Do you have a general understanding of</p> <p>25 the priorities in a SIPC liquidation with</p>	<p style="text-align: right;">Page 55</p> <p>1 D. McIsaac</p> <p>2 respect to creditor claims?</p> <p>3 A. I'm not a SIPC expert. I have a</p> <p>4 general understanding of the SIPC claims.</p> <p>5 Q. Are you an expert in Customer</p> <p>6 Protection Rules?</p> <p>7 A. Yes.</p> <p>8 Q. What's your understanding of where</p> <p>9 customers fall in terms of priority when they</p> <p>10 have claims against a SIPC Trustee or an estate</p> <p>11 and bank in SIPC proceedings relative to general</p> <p>12 Creditors?</p> <p>13 MR. OXFORD: Object to the form.</p> <p>14 A. I believe SIPC customers have first</p> <p>15 priority to the assets in the customer estate</p> <p>16 and then share rateably with the general</p> <p>17 Creditors if there's not enough -- not enough</p> <p>18 moneys in the general estate to satisfy them.</p> <p>19 Q. Is it your understanding that the LBI</p> <p>20 estate has sufficient assets currently to cover</p> <p>21 all customer claims?</p> <p>22 MR. OXFORD: Object to the form.</p> <p>23 A. I don't know if they have or don't</p> <p>24 have. I think that's still being assessed.</p> <p>25 Q. Is it possible that the reason</p>
<p style="text-align: right;">Page 56</p> <p>1 D. McIsaac</p> <p>2 Barclays wrote these expenses off is because</p> <p>3 Barclays didn't expect it would ever be able to</p> <p>4 recover these costs from the Lehman estate?</p> <p>5 A. I can't determine why Barclays wrote</p> <p>6 them off.</p> <p>7 Q. Do you generally consider a</p> <p>8 broker-dealer who is in SIPC proceedings to be a</p> <p>9 good credit risk?</p> <p>10 A. No, I would not consider them a good</p> <p>11 credit risk.</p> <p>12 Q. Would you extend credit to a</p> <p>13 broker-dealer in SIPC liquidation?</p> <p>14 A. Would I extend credit to them after</p> <p>15 they were in liquidation?</p> <p>16 MR. OXFORD: Object to the form.</p> <p>17 A. Sorry.</p> <p>18 Probably if it was court-approved, I</p> <p>19 think there's some way where the court can</p> <p>20 approve you providing credit to a liquidated</p> <p>21 estate, but no, in general terms, I wouldn't.</p> <p>22 Q. Why not?</p> <p>23 A. Because you have a bankrupt estate</p> <p>24 that you don't know the creditworthiness of</p> <p>25 whether or not you'll be paid.</p>	<p style="text-align: right;">Page 57</p> <p>1 D. McIsaac</p> <p>2 Q. Do you think -- do you have any reason</p> <p>3 to believe that Barclays thought it would be</p> <p>4 paid by the LBI estate for losses it incurred on</p> <p>5 affiliate positions that it took clearance</p> <p>6 responsibility for?</p> <p>7 MR. OXFORD: Object to the form.</p> <p>8 MR. GREEN: Objection.</p> <p>9 A. Again, I don't know what was in</p> <p>10 Barclays' mind and what they thought when they</p> <p>11 wrote off the receivables. I'm not sure what</p> <p>12 the basis was.</p> <p>13 Q. Would you agree that your report</p> <p>14 characterizes the level of risk associated with</p> <p>15 affiliate positions to be minimal, if it existed</p> <p>16 at all?</p> <p>17 MR. OXFORD: Object to the form.</p> <p>18 A. Yes, I think it says it's less risky</p> <p>19 because the credit is borne by the affiliates,</p> <p>20 the market risk is borne by the affiliates, and</p> <p>21 that I believe Barclays was not taking</p> <p>22 responsibility for any affiliates' positions.</p> <p>23 Q. But you agree that Barclays was taking</p> <p>24 settlement responsibility for those positions?</p> <p>25 A. It appears that in the TAA that they</p>

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<p>1 D. McIsaac 2 took settlement responsibility for them. 3 Q. And are you aware of the financial 4 state of the LBI affiliates themselves during 5 the month of September 2008? 6 MR. OXFORD: Object to the form. 7 A. I believe some of them were in 8 liquidation and some of them may not have been. 9 Q. Would you consider them a credit risk 10 at that time? 11 MR. OXFORD: Object to the form. You 12 mean any time in September? 13 Q. Sure. We'll start with any time in 14 September. 15 A. I don't know what the credit risk 16 would have been in September prior to anybody 17 going into liquidation, what the analysis would 18 have been, and people will take risk based on 19 what the rewards they think they will receive. 20 Q. What reward was Barclays receiving by 21 agreeing to take over settlement responsibility 22 for the affiliate positions? 23 A. Maybe the business that was there and 24 maybe they were willing to take on an additional 25 risk to -- to get the customer business and</p>	<p>1 D. McIsaac 2 whatever other business was there. 3 Q. Were they going to see any profit from 4 taking over the affiliate positions themselves? 5 A. When you take over a business, not 6 every piece of it may be profitable. So you may 7 accept some risk to get the profitable pieces of 8 it. I don't know why they assumed the 9 responsibility for the affiliates if they didn't 10 want them. 11 Q. Earlier you were describing 12 transactions in which you conducted due 13 diligence in one of your prior companies, and 14 you explained that the acquirer spent a week to 15 several weeks reviewing the customer base to 16 determine which customers it wanted and which 17 customers it didn't? 18 A. Uh-huh. 19 Q. Do you believe that Barclays had 20 adequate time during the week of September 15, 21 2008 to review all of the customers that it was 22 acquiring or not acquiring from LBI? 23 MR. OXFORD: Object to the form. 24 A. It possibly didn't have time to review 25 all the customers, but it certainly had time to</p>
Page 60	Page 61
<p>1 D. McIsaac 2 review the affiliates and could have determined 3 that they didn't want to take the affiliate 4 accounts if that was the case. 5 Q. What is your understanding of what 6 would have happened in the event that Barclays 7 had refused to take responsibility for the 8 affiliate positions? 9 A. I don't know what would have happened 10 if they refused to take responsibility for it. 11 Q. Is it your understanding that the 12 affiliate positions were commingled at the OCC 13 with firm positions and also with customer 14 positions? 15 A. Yes. 16 Q. Is it your understanding that there 17 were both affiliate and firm positions in the 18 074F account at the OCC? 19 A. Yes. 20 Q. And is it your understanding that 21 there were affiliate positions commingled with 22 customer positions in the 074C account at the 23 OCC? 24 A. Yes. 25 Q. What is your understanding of the</p>	<p>1 D. McIsaac 2 position that the OCC took during the week of 3 September 15 with respect to Lehman Brothers as 4 a clearing member? 5 MR. OXFORD: Object to the form. 6 Vague. 7 A. I'm not sure what position the OCC 8 took with regard to them. You know, I thought 9 they were going on as business as usual. They 10 looked like they were clearing their trades and 11 assigning their trades, so I don't see any -- I 12 haven't seen anything that says what the OCC did 13 or didn't do. 14 Q. Do you have any basis to say what 15 would have happened to LBI's accounts with the 16 OCC if Barclays had refused to take over 17 settlement responsibility for those accounts? 18 A. I don't have a basis, but I assume the 19 OCC would have liquidated the accounts. 20 Q. Why do you assume that? 21 A. Because Lehman was bankrupt at the 22 time or was entering into SIPC liquidation, so I 23 think the OCC as a first move would liquidate 24 the accounts. It doesn't mean that various 25 positions in those accounts couldn't be</p>

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<p>1 D. McIsaac 2 transferred to another broker-dealer. 3 Q. Do you know how much time Barclays and 4 Lehman had to negotiate the terms of this 5 transaction before they entered into the APA? 6 A. No, I do not. 7 Q. Would it surprise you to hear that it 8 was less than 24 hours? 9 MR. OXFORD: Object to the form. You 10 can answer. 11 A. It would -- wouldn't surprise me or 12 not surprise me. Lehman was in financial 13 difficulty at that time and there were reports 14 in the papers that a lot of people were looking 15 at Lehman from time to time. So I have no idea 16 when Barclays started to look at it and 17 determined what they wanted to do. 18 Q. You didn't review that in connection 19 with this report? 20 A. Review? What would I have reviewed to 21 say that? I'm asking what -- what would I have 22 reviewed? 23 Q. I understand that you're asking that, 24 but I'm asking you what did you review in order 25 to understand the circumstances in which this</p>	<p>1 D. McIsaac 2 deal was negotiated? 3 A. I read the Asset Purchase Agreement. 4 I read the Clarification Letter. I read the 5 TAA. You know, I read some e-mails that went 6 around. As a general knowledge of what was 7 happening in 2008, you know, I lived it. 8 Q. Okay. So is it fair to say that you 9 prepared your report without knowing the amount 10 of time that it took Lehman -- that Barclays and 11 Lehman had to negotiate the APA? 12 A. I didn't specifically find out how 13 much time they took to negotiate it and I don't 14 know what that has to do with what we're talking 15 about. I'm not sure what the timing, you know, 16 has to do with what they decided or what they 17 didn't decide to do. They certainly didn't have 18 to do it, I don't think, at any point in time. 19 There was not a gun held to their head, I don't 20 believe. I mean, unless I didn't -- there's 21 more information than I know. 22 Q. Uh-huh. So when you prepared your 23 opinions in your report, did you believe it was 24 possible that the parties had spent more than a 25 week negotiating the terms of the APA?</p>
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<p>1 D. McIsaac 2 MR. OXFORD: Object to the form. 3 A. I don't think I gave much thought to 4 how much time they spent negotiating it. I 5 understand the timing of what was happening 6 around then. I don't know how long they were 7 talking about the APA, what conversations they 8 may have had during the time period. I don't 9 believe that's public information. 10 Q. Were you allowed to ask questions of 11 fact witnesses during your investigation? 12 A. I -- 13 MR. OXFORD: I'll object to the form 14 of the question. 15 Q. Okay. Go ahead. You can answer. 16 MR. OXFORD: I'm not sure in terms 17 of -- 18 Q. Did you talk to anybody -- let me 19 rephrase the question. 20 MS. BLOOMER: Thanks, Neil. 21 Q. Did you talk to anybody who was 22 involved in the negotiation of the transaction? 23 A. No, I did not. 24 Q. Did you speak with the advisors who 25 were present at the time?</p>	<p>1 D. McIsaac 2 A. No, I did not. 3 MR. OXFORD: Sorry. If you can slow 4 down, Mr. McIsaac, to let me get my 5 objection. 6 I'll object to the form of the 7 question and particularly to the vagueness 8 of the term "advisors." 9 Q. Okay. When did you speak with 10 Deloitte? 11 MR. OXFORD: Object to the form. 12 A. Regarding? Excuse me, regarding what? 13 Q. You said earlier today that in 14 preparing for your deposition today you spoke 15 with Deloitte. Was that the first time that you 16 spoke with them? 17 A. Deloitte is the financial advisors for 18 the Trustee. In working on the original work I 19 did with the motion, I spoke to Deloitte, if 20 that's what you mean, but not in relation to 21 this. 22 Q. Okay. Was Deloitte present, to your 23 understanding, during the negotiations of this 24 deal? 25 A. I don't believe they were, but I don't</p>

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<p>1 D. McIsaac 2 know. 3 Q. Did you ask them? 4 A. No, I did not. 5 Q. Did you ask them any of the 6 circumstances under which the deal was 7 negotiated? 8 A. No, I did not. 9 Q. Did you ask anyone what the 10 circumstances were of the deal at the time it 11 was negotiated? 12 A. I think I understand what was going on 13 in the environment at that time. I don't think 14 I had to ask specifically what was happening in 15 the environment at that time. It was a rough, 16 you know, a difficult time and I don't know if 17 Barclays had one day or five days or how long 18 they were reviewing the transaction. 19 Q. You don't know if it was ten days? 20 A. I don't know if it was ten days. 21 Q. And you don't know if it was a month 22 that Barclays had to review the transaction? 23 A. That's right. 24 Q. Okay. 25 A. But that doesn't change my thoughts on</p>	<p>1 D. McIsaac 2 it because whether or not you had one day or 3 ten, you could still decide to buy something or 4 not buy something. You can decide what you want 5 to buy and what you don't want to buy. 6 Q. Can you remind me, if you haven't 7 testified to this already -- strike that. 8 What is the shortest amount of time 9 that you've ever seen an acquisition of a 10 broker-dealer business consummated in? 11 MR. OXFORD: Object to the form. 12 A. I believe Bank of America bought 13 Lehman Brothers over a weekend. 14 Q. Do you know how long -- did they spend 15 any time negotiating that transaction prior to 16 that weekend? 17 A. All I know is what I read in the 18 papers, and I thought Bank of America was 19 thinking of buying Lehman and instead bought 20 Merrill at that point in time. I thought the 21 negotiations happened over a weekend. 22 Q. Do you know whether they had done due 23 diligence prior to that weekend? 24 A. I don't know. 25 Q. Do you have any knowledge at all of</p>
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<p>1 D. McIsaac 2 the negotiations that took place during the 3 structuring of that deal? 4 A. No, I do not. 5 Q. With respect to the deals that you 6 have personal knowledge of, what's the shortest 7 amount of time that you know of in which an 8 acquisition of a broker-dealer business took 9 place? 10 MR. OXFORD: Object to the form. 11 Vague. 12 A. I -- I've been involved in some 13 acquisitions and mergers that I don't know how 14 much time was spent in doing the negotiation. 15 When UBS and Swiss Bank merged, I have no idea 16 how long it took for them to do the due 17 diligence and decide on the merger. 18 Q. What's the shortest amount of time 19 with respect to a transaction that you do have 20 an idea of how long it took? 21 A. Probably a month or so. 22 Q. You say in your report that the 23 circumstances of this transaction don't affect 24 your opinion. Do you recall saying that in your 25 report?</p>	<p>1 D. McIsaac 2 A. I believe so. 3 Q. Okay. The fact that this transaction 4 closed in 24 -- was negotiated in 24 hours 5 doesn't have any impact on your opinion as to 6 what was rational under those circumstances in 7 terms of structuring the terms of the deal? 8 MR. OXFORD: Objection. 9 Q. Is that your opinion? 10 MR. OXFORD: Object to the form. 11 Assumes facts not in evidence. 12 A. I believe it was negotiated. It 13 didn't have to close, and until such time as it 14 closed, there was still negotiations and I 15 assume due diligence going on. 16 Q. Is it your understanding that an 17 agreement can be negotiated after it's executed? 18 A. An agreement can be -- I don't -- I'm 19 sorry, I'm not sure where you're going on that. 20 "After it's executed," I'm not sure. 21 Q. Sure. Do you agree that the parties 22 would have negotiated the terms of the deal 23 before they signed a binding agreement that 24 expressed and set forth the terms of that deal? 25 MR. OXFORD: Object to the form.</p>

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<p>1 D. McIsaac 2 You can answer. 3 A. I'm sorry. I believe firms negotiate 4 a shell of a deal and then usually negotiate the 5 specifics. Until a final contract is signed and 6 it's consummated, that is not, you know, it's 7 not a closed deal. 8 Q. Showing you a document that's been 9 premarked as Exhibit 630. 10 Can you take the time to review this 11 e-mail and let me know when you're ready? 12 (Document review.) 13 A. Yes. 14 Q. Did you review this document in 15 preparing for your deposition today? 16 A. I believe I might have seen this. I 17 don't remember exactly, but I might have seen 18 this e-mail trail. 19 Q. And had you reviewed this document at 20 the time you prepared your expert report on 21 exchange-traded derivatives? 22 A. I thought I just answered that. I 23 think I might have reviewed this when I -- when 24 I prepared it. 25 Q. Oh, I was asking you whether you</p>	<p>1 D. McIsaac 2 reviewed it when you prepared for the deposition 3 today -- 4 A. Oh, no. 5 Q. -- was my first question. 6 A. No, no, I did not review it before 7 today, for preparation today. I might have 8 reviewed it in preparing my report. 9 Q. You're not sure? You might -- 10 A. I believe I've seen this. I know I've 11 seen the top of it. I don't know if I've seen 12 the whole other trail. 13 Q. Okay. If you turn to the second page, 14 will you look at the paragraph that's 15 denominated paragraph 3? 16 A. Uh-huh. 17 Q. It says, "If the transaction does not 18 close tonight, OCC would need to immediately 19 liquidate and close out the LBI accounts and is 20 preparing to do so." Do you see that? 21 A. Yes. 22 Q. You see that this is an e-mail from 23 James McDaniel of Sidley? 24 A. Uh-huh. 25 Q. And it's to Ed Rosen of Cleary</p>
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<p>1 D. McIsaac 2 Gottlieb. Do you know who Ed Rosen is? 3 A. Yes. He's a lawyer for Cleary 4 Gottlieb. 5 Q. And do you know who Cleary Gottlieb 6 was representing in this transaction? 7 A. I believe they were representing 8 Barclays. 9 Q. And you see Hughes Hubbard is also 10 copied on these e-mails, Giddens and Kobak? 11 A. Uh-huh. 12 Q. Do you know who they are? 13 A. Mr. Giddens is the Trustee and Mr. 14 Kobak is his legal counsel, I believe. 15 Q. Okay. And you see that the SPIC 16 organization, Steve Harbeck, was also copied? 17 A. Yes. 18 Q. You said earlier in your testimony 19 that you didn't think the parties had to do the 20 deal in any particular amount of time, and I 21 believe you said they didn't have a gun to their 22 head. Do you recall that testimony? 23 A. Yes. 24 Q. Do you agree that this e-mail suggests 25 that there was some urgency to the parties in</p>	<p>1 D. McIsaac 2 closing the deal in the timeframe that they did? 3 MR. OXFORD: Object to the form. 4 A. I believe the e-mail from the -- Mr. 5 McDaniel at Sidley Austin was relaying that to 6 Mr. Rosen. Barclays still did not have to go 7 through with the deal if they didn't want to go 8 through with the deal. I mean, again, nobody 9 was holding a gun to their head saying if you 10 don't do this, I'm going to shoot you. They 11 could have walked away from it, I assume, at 12 that point in time or they could have postponed 13 the closing. I don't know if they could have 14 done that, but -- 15 Q. Do you think they could have postponed 16 the closing and avoided liquidation of the OCC 17 account? 18 A. I think you could have negotiated 19 anything with the OCC if they wanted to talk to 20 them about it. I don't know what negotiations 21 were going on. I don't know why this was being 22 pushed at this point in time. 23 I mean, Barclays, when I said they 24 didn't have a gun to their head, they could have 25 walked away from the deal at any point in time.</p>

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<p>1 D. McIsaac</p> <p>2 If they didn't think they had enough time to do</p> <p>3 the due diligence and to understand what they</p> <p>4 were buying, they didn't have to buy it I guess.</p> <p>5 Q. And they didn't have to buy it if they</p> <p>6 didn't like the terms of the deal either, right?</p> <p>7 A. Right.</p> <p>8 Q. You agree that the parties were aware</p> <p>9 that the OCC was at least threatening to</p> <p>10 liquidate the accounts on the 22nd if the deal</p> <p>11 didn't close that morning?</p> <p>12 A. Yes.</p> <p>13 Q. Do you have any experience that would</p> <p>14 allow you to surmise on what an OCC</p> <p>15 liquidation -- how an OCC liquidation would have</p> <p>16 proceeded?</p> <p>17 MR. OXFORD: Object to the form.</p> <p>18 A. I would assume they would either</p> <p>19 auction the positions off or, you know, closed</p> <p>20 them out. I'm not sure how they would have</p> <p>21 proceeded. I'm not -- I have not seen one in my</p> <p>22 past experience.</p> <p>23 Q. Any liquidation or any auction have</p> <p>24 you seen?</p> <p>25 A. I have not seen a liquidation at the</p>	<p>1 D. McIsaac</p> <p>2 OCC. I have not been involved in a liquidation</p> <p>3 at the OCC.</p> <p>4 Q. Have you been involved in a</p> <p>5 liquidation at any other clearing organization?</p> <p>6 A. I have not personally been involved,</p> <p>7 no.</p> <p>8 Q. What is your understanding of what the</p> <p>9 OCC's rights are in the event of a liquidation?</p> <p>10 MR. OXFORD: Object to the form.</p> <p>11 A. I believe they have the right to</p> <p>12 liquidate the positions and charge back to the</p> <p>13 clearing firm any losses they incur that's not</p> <p>14 covered by the margin that they have available,</p> <p>15 and if they don't, I assume -- I believe they</p> <p>16 have the right to charge back to other members</p> <p>17 of the clearing org.</p> <p>18 Q. Okay. So you would agree then that</p> <p>19 any margin that was posted at the OCC was</p> <p>20 accessible to the OCC in order to cover the</p> <p>21 costs of a liquidation?</p> <p>22 A. Yes.</p> <p>23 Q. And would you agree that all of the</p> <p>24 margin posted at the OCC was accessible to the</p> <p>25 OCC in the event that they wanted to auction off</p>
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<p>1 D. McIsaac</p> <p>2 the positions instead of liquidating them?</p> <p>3 A. Yes.</p> <p>4 Q. Do you have any knowledge of any other</p> <p>5 clearing organizations liquidating or auctioning</p> <p>6 off positions?</p> <p>7 A. I believe that during the week I've</p> <p>8 been informed that the CME auctioned off LBI's</p> <p>9 positions.</p> <p>10 Q. Do you have any understanding of the</p> <p>11 approach that the CME took to auctioning off the</p> <p>12 positions?</p> <p>13 A. I haven't reviewed anything firsthand,</p> <p>14 but I believe they took the various positions</p> <p>15 and would have gone to other firms and asked</p> <p>16 them to assume them.</p> <p>17 Q. And do you know what the CME was</p> <p>18 offering in exchange for other members assuming</p> <p>19 those obligations?</p> <p>20 A. No, I'm not, I'm not sure of the</p> <p>21 negotiations that occurred with them.</p> <p>22 Q. Do you have an understanding of the</p> <p>23 amount of money that was consumed in the auction</p> <p>24 of the CME -- in the CME's auction of LBI's</p> <p>25 proprietary positions?</p>	<p>1 D. McIsaac</p> <p>2 MR. OXFORD: Object to the form.</p> <p>3 A. I have heard a number maybe a billion</p> <p>4 dollars, but I don't know if I've seen the</p> <p>5 actual documents.</p> <p>6 Q. I'm showing you a document that's</p> <p>7 marked as Exhibit 442. I certainly don't expect</p> <p>8 you to read the whole document.</p> <p>9 A. Okay, good. I was going to say can I</p> <p>10 please get a brief recess if that's the case.</p> <p>11 Q. This is a copy of the hearing that</p> <p>12 took place before Judge Peck in the bankruptcy</p> <p>13 proceeding on September 19, 2008. Have you had</p> <p>14 occasion to review any portion of the sale</p> <p>15 hearing transcript?</p> <p>16 A. I have reviewed this maybe six months</p> <p>17 ago.</p> <p>18 Q. Can you turn to page 61, the full</p> <p>19 paragraph on page 61 starting "Since the hearing</p> <p>20 last Wednesday," and it continues, "and in the</p> <p>21 space of roughly 24 hours, your Honor, there</p> <p>22 have been a number of significant events.</p> <p>23 Yesterday the Chicago Mercantile Exchange</p> <p>24 unilaterally decided to close out all of</p> <p>25 Lehman's positions on that exchange. That</p>

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<p>1 D. McIsaac 2 closeout resulted in a loss to Lehman of 3 approximately \$1.6 billion." Do you see that? 4 A. Yes, I do. 5 Q. Do you recall, does this refresh your 6 recollection -- 7 A. Yes, I think this is probably where I 8 saw it. 9 Q. Do you have any reason to doubt the 10 accuracy of the statement that's made on this 11 page? 12 A. No, I do not. 13 Q. So you'd agree that the Chicago 14 Mercantile Exchange closed out Lehman's 15 positions at a cost of \$1.6 billion? 16 MR. OXFORD: Object to the form. 17 A. That's what it says here. 18 Q. And that's what you believe happened? 19 A. That's what I believe happened. 20 MR. OXFORD: Object to the form. 21 Q. What's your understanding of what a 22 SIPC trustee's objectives are when analyzing the 23 terms of a proposed bankruptcy sale? 24 MR. OXFORD: I'll object to the form. 25 A. I assume that they -- any sale is</p>	<p>1 D. McIsaac 2 going to occur of any assets, they would have to 3 make sure that they are protecting the customers 4 and receive, you know, value for the assets 5 they're selling. 6 Q. And is the customer -- is the 7 preservation of value for customers the sole 8 objective of a trustee, do you know? 9 MR. OXFORD: I'll object to the form 10 of the question. 11 A. No, I don't think so. I think they're 12 supposed to preserve the whole estate. 13 Q. Are trustees also interested in 14 maximizing the number of customer accounts that 15 can be preserved and transferred to a solvent 16 broker-dealer? 17 MR. OXFORD: Objection to the form. 18 A. I believe both transfers are a 19 priority of SIPC. 20 Q. Have you ever advised the SIPC trustee 21 in analyzing the terms of a proposed bankruptcy 22 sale? 23 A. No, I have not. 24 Q. Do you have any expertise in advising 25 on what the proper objectives are of a trustee</p>
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<p>1 D. McIsaac 2 in that circumstance? 3 MR. OXFORD: Objection to the form. 4 A. No, I do not. 5 Q. Is it your understanding that the 6 proprietary positions in Lehman's OCC account as 7 of the week of September 15 carried exposure? 8 MR. OXFORD: Object to the form. 9 A. All positions carry exposure. I'm not 10 sure if I'm answering the question, your 11 question, but all positions, as far as I'm 12 concerned, carry exposure. 13 Q. By transferring positions do you agree 14 that you're eliminating that exposure? 15 MR. OXFORD: I object to the form. 16 A. By the person transferring them? 17 Q. Uh-huh. 18 A. Yes, they would limit their exposure. 19 Q. So you would agree that LBI and the 20 Trustee, by agreeing to transfer the proprietary 21 positions to Barclays, was eliminating any 22 exposure that it had on those positions? 23 A. They would no longer have exposure on 24 those positions, I assume, after they have 25 transferred them.</p>	<p>1 D. McIsaac 2 Q. And would that be to the benefit of 3 customers, to eliminate exposure to the -- to a 4 SIPC trustee's estate? 5 MR. OXFORD: Objection to the form. 6 A. It would benefit customers if you were 7 paid properly for them, yes. So if you took 8 exposure off and received consideration, then it 9 would be good. If you just took exposure off 10 and received no consideration, I don't know if 11 it would be good. You'd have to analyze each 12 one separately. 13 Q. That would depend on the value of the 14 positions at any given point in time, is that 15 fair to say? 16 MR. OXFORD: Objection to the form. 17 A. It would depend on the value of the 18 positions, the marketplace, you know, what -- 19 what the impact of disposing of those positions 20 would have or the downside it could have. 21 Q. If there's net exposure on a set of 22 positions that you transfer, would it be 23 irrational to do that for no consideration? 24 MR. OXFORD: Objection to the form. 25 A. When you say "net exposure," there's</p>

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<p>1 D. McIsaac</p> <p>2 exposure, so would it be rational to transfer</p> <p>3 them for no consideration? I don't know at the</p> <p>4 point in time. I don't know -- the worst case</p> <p>5 you could be is zero if you're long. So not</p> <p>6 getting anything for them, if you liquidate</p> <p>7 them, gave them away for nothing or had them</p> <p>8 liquidated, you would be at the same place, and</p> <p>9 if the margin would cover any potential losses,</p> <p>10 you might be better off having the OCC liquidate</p> <p>11 them than give them away for free.</p> <p>12 Q. You testified earlier that you could</p> <p>13 never guarantee that the margin would be</p> <p>14 sufficient to cover exposures in a liquidation;</p> <p>15 is that right?</p> <p>16 MR. OXFORD: Objection. Misstates</p> <p>17 testimony.</p> <p>18 A. Yes, I believe I said something to</p> <p>19 that effect.</p> <p>20 Q. So would you agree that if you have</p> <p>21 short positions, there's exposure that can't be</p> <p>22 eliminated entirely unless you transfer the</p> <p>23 positions?</p> <p>24 MR. OXFORD: Object to the form.</p> <p>25 Misstates his testimony.</p>	<p>1 D. McIsaac</p> <p>2 A. They could be liquidated the next day</p> <p>3 and you would relieve your exposure.</p> <p>4 Q. I'm showing you an exhibit that's been</p> <p>5 marked 676A. Do you recognize this document?</p> <p>6 A. Yes, I believe I've seen this before.</p> <p>7 Q. Did you review it in preparing for</p> <p>8 today's deposition?</p> <p>9 A. No, I don't believe so.</p> <p>10 Q. Did you review it at the time that you</p> <p>11 prepared your report?</p> <p>12 A. Yes.</p> <p>13 Q. If you could turn to Exhibit 1 of this</p> <p>14 document. You see that Exhibit 1 shows the</p> <p>15 margin requirements on dates from 9/15/2008</p> <p>16 through 9/19/2008?</p> <p>17 A. Yes.</p> <p>18 Q. Okay. And just so that I don't force</p> <p>19 you to take this out of context, you should read</p> <p>20 the paragraph where he describes what the</p> <p>21 margin -- which margin requirements he's</p> <p>22 referring to. So if you look at --</p> <p>23 MR. OXFORD: Paragraph 6, I think.</p> <p>24 Q. -- paragraph 6 of Mr. Jones'</p> <p>25 declaration, he says, "Exhibit 1 hereto shows</p>
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<p>1 D. McIsaac</p> <p>2 for each day from September 15 through September</p> <p>3 19, 2008, the total requirement at the open of</p> <p>4 business for each day across all of LBI's OCC</p> <p>5 accounts, the total value of collateral of the</p> <p>6 open business of each day across all of LBI's</p> <p>7 OCC accounts, and the excess or deficit at the</p> <p>8 open of business on each day across all of LBI's</p> <p>9 OCC accounts." Do you see that?</p> <p>10 A. Yes.</p> <p>11 Q. Do you see that on between September</p> <p>12 15 and September 16 the margin requirement for</p> <p>13 the OCC accounts went from \$789,583,205 to</p> <p>14 \$1,359,001,075?</p> <p>15 A. Yes, I see that.</p> <p>16 Q. Would you agree with me that's an</p> <p>17 increase of over \$500 million in a single day?</p> <p>18 A. Yes.</p> <p>19 Q. If you look two lines down from</p> <p>20 September 17, 2008 to September 18, 2008, do you</p> <p>21 see that the margin requirement went from</p> <p>22 \$1,400,000,000 and change to \$2 billion, over \$2</p> <p>23 billion, do you see that?</p> <p>24 A. Yes, I see that.</p> <p>25 Q. Would you agree that that's over a</p>	<p>1 D. McIsaac</p> <p>2 \$600 million increase in a single day?</p> <p>3 A. Yes.</p> <p>4 Q. You said a moment ago that the -- that</p> <p>5 LBI could have liquidated the following day and</p> <p>6 eliminated their exposure on their OCC accounts.</p> <p>7 Do you recall that testimony?</p> <p>8 A. Yes.</p> <p>9 Q. Would LBI have been able to know for</p> <p>10 certain that it would not -- strike that. Would</p> <p>11 LBI know for certain what the cost of</p> <p>12 liquidating the account on the following day</p> <p>13 would have been by looking at that day's margin</p> <p>14 requirements?</p> <p>15 MR. OXFORD: Object to the form.</p> <p>16 A. Let me make sure I have your question</p> <p>17 clear. You're asking me as of the close of</p> <p>18 business the 19th, would LBI have known what the</p> <p>19 cost would be to close out their positions on</p> <p>20 top day the 22nd?</p> <p>21 Q. Yes.</p> <p>22 A. They would know what the closing price</p> <p>23 was on the 19th and use that as I guess a proxy</p> <p>24 for what, you know, for what they could possibly</p> <p>25 close it out and do some kind of an</p>

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<p>1 D. McIsaac</p> <p>2 extrapolation on how they might impact the</p> <p>3 market.</p> <p>4 Q. Okay. And if the margin requirement</p> <p>5 is a proxy for exposure and increased by \$500</p> <p>6 million, as it had on two other days this week,</p> <p>7 would you agree that using Friday's close of</p> <p>8 business number may not be an accurate way to</p> <p>9 determine what the cost would be on Monday of</p> <p>10 closing out the positions?</p> <p>11 MR. OXFORD: Objection. Form.</p> <p>12 A. It's very difficult to determine that</p> <p>13 because I believe the 19th was a triple-witching</p> <p>14 day, so a lot of the exposures that were sitting</p> <p>15 there would have been closed out close of</p> <p>16 business. I don't know if this margin</p> <p>17 requirement is at the end of the day or the -- I</p> <p>18 believe this is the beginning of the day on the</p> <p>19 19th.</p> <p>20 Q. Uh-huh.</p> <p>21 A. So when all the options that they --</p> <p>22 that were in their account were called, anything</p> <p>23 that was expiring on the 19th would have had an</p> <p>24 impact on this amount. I don't know the balance</p> <p>25 or the size of the positions they had that were</p>	<p>1 D. McIsaac</p> <p>2 expiring on the 19th, but again, I believe if I</p> <p>3 remember Mr. Leitner's testimony, he looked at</p> <p>4 the margin as being a proxy for the most they</p> <p>5 could lose or the most that would cover</p> <p>6 Barclays' exposure.</p> <p>7 So, by looking at that, my guess this</p> <p>8 would be the worst place LBI would be in if they</p> <p>9 exposed. So if they were looking to transfer</p> <p>10 their assets, this might be a starting point for</p> <p>11 negotiations but not necessarily the ending</p> <p>12 point.</p> <p>13 Q. Okay. Whose responsibility do you</p> <p>14 understand it was to settle the trades that</p> <p>15 occurred over the expiration weekend, Barclays</p> <p>16 or Lehman's?</p> <p>17 A. I believe it was Lehman's.</p> <p>18 Q. You believe it was Lehman's?</p> <p>19 A. Barclays didn't sign the agreement</p> <p>20 until the 22nd. I believe they all settle over</p> <p>21 the weekend.</p> <p>22 Q. And when would the pays and collects</p> <p>23 from a weekend expiration be due?</p> <p>24 A. Monday morning, I believe, because you</p> <p>25 can't pay anything on the weekend.</p>
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<p>1 D. McIsaac</p> <p>2 Q. And it's your understanding that</p> <p>3 Lehman is the party that settled those weekend</p> <p>4 expirations?</p> <p>5 A. I believe any settlements would have</p> <p>6 had to occur because Barclays didn't own them at</p> <p>7 that point in time. So all of the settlement</p> <p>8 transactions would have had to go through</p> <p>9 Lehman, and I believe Lehman settled them all.</p> <p>10 To my knowledge, I think that's what happened.</p> <p>11 Q. If that's inaccurate, would that</p> <p>12 affect your opinion in any way?</p> <p>13 MR. OXFORD: Object to the form.</p> <p>14 A. Not necessarily, because I don't know</p> <p>15 the size of it, although I thought I -- I</p> <p>16 believe I saw some information that showed the</p> <p>17 pay/collects being a significant pay-back to</p> <p>18 Lehman on the 22nd or pay-back to the -- to the</p> <p>19 holder of the account on the 22nd.</p> <p>20 Q. Would it be rational for Barclays to</p> <p>21 accept the obligations on options expiring over</p> <p>22 the weekend of September 20th and 21st for short</p> <p>23 positions and yet not acquire the rights for any</p> <p>24 profit and loss on long positions?</p> <p>25 MR. OXFORD: Object to the form.</p>	<p>1 D. McIsaac</p> <p>2 A. I'm not sure -- please rephrase it.</p> <p>3 I'm not sure where -- what the question is</p> <p>4 asking.</p> <p>5 Q. Sure. There were long positions and</p> <p>6 short positions both in LBI's --</p> <p>7 A. Right.</p> <p>8 Q. -- OCC accounts; is that right?</p> <p>9 A. Right. Okay. Yes.</p> <p>10 Q. And any short positions that were</p> <p>11 exercised over the weekend of September 22 --</p> <p>12 20th and 21st would have resulted in a loss to</p> <p>13 the clearing member; is that right?</p> <p>14 MR. OXFORD: Objection to form.</p> <p>15 A. Not necessarily. If they had the</p> <p>16 assets to deliver against the ex -- the</p> <p>17 exercise, there would be no loss.</p> <p>18 Q. And if they didn't have the assets to</p> <p>19 deliver and they had to acquire them at the then</p> <p>20 market rates?</p> <p>21 A. If they had marked them --</p> <p>22 MR. OXFORD: Wait. I'm sorry. Can</p> <p>23 you just let me get my objection in?</p> <p>24 THE WITNESS: I'm sorry.</p> <p>25 MR. OXFORD: I'll object to the form.</p>

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<p>1 D. McIsaac 2 You can answer. Thank you. 3 A. If they would have been marking their 4 positions to market, they would have, I assume 5 already, recorded those losses. 6 Q. When do you think that Lehman recorded 7 the losses that occurred over the weekend of 8 September 20th and 21st? 9 A. I believe you would record those 10 effective the 19th because that's the option 11 expiration date. At that point in time, you 12 know what your locked-in is on your gains and 13 losses. You would do that on a daily basis -- 14 Q. And when -- 15 A. -- of the market movement. 16 Q. I apologize for interrupting you. 17 And when would Lehman make the payment 18 on those trades? 19 A. I would assume the next business day. 20 Q. And so you're assuming that Lehman 21 paid any amounts due to settle short options 22 that were in its account over the weekend of 23 September 20th and -- 20th and 21st? 24 MR. OXFORD: I'll object to the form. 25 A. I assumed that not everything is cash</p>	<p>1 D. McIsaac 2 settled so they might have delivered securities 3 against those exercised calls or puts, and on 4 the cash settle piece, that the pay/collect 5 would occur on Monday morning. And if they 6 didn't have securities to deliver, they would 7 have to go out and buy the securities and make a 8 delivery. 9 MR. OXFORD: Trish, we've been going 10 about another hour. I don't know if this is 11 a good time to take a five-minute break. 12 MS. BLOOMER: This is actually a good 13 time. That would be fine. Off the record. 14 THE VIDEOGRAPHER: The time is 11:36. 15 This is the end of the tape labeled number 16 2. We're going off the record. 17 (Recess.) 18 THE VIDEOGRAPHER: This is the start 19 of the tape labeled number 3. The time is 20 11:57. We are back on the record. 21 BY MS. BLOOMER: 22 Q. Mr. McIsaac, could you turn in your 23 report to page 7, please. The first full 24 sentence at the top of the page -- 25 A. Give me one second. One second.</p>
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<p>1 D. McIsaac 2 Q. Sure. 3 A. Okay. 4 Q. The first full sentence at the top of 5 the page, you say, "The circumstances of the 6 transaction between Lehman and Barclays do not 7 change my opinions in this matter." 8 What circumstances were you referring 9 to in that sentence? 10 A. The timing of everything happening, 11 the -- I think Mr. Leitner was talking about how 12 much time, you know, it took the quickness of 13 the negotiations. 14 Q. Any other circumstances that you 15 were -- 16 A. No. I mean, the marketplace, you 17 know, everything that was happening at the time. 18 Q. Anything other than the timing and the 19 marketplace that you were -- that you had in 20 mind when you said the circumstances of -- 21 A. No, I think just the market, what was 22 happening in the market at the time -- 23 I'm sorry. 24 Q. Are there any circumstances other than 25 the timing and the marketplace that you had in</p>	<p>1 D. McIsaac 2 mind when you said "the circumstances of the 3 transaction between Lehman and Barclays do not 4 change my opinions in this matter"? 5 A. No. Basically that was it. 6 Q. With respect to the timing, what was 7 your understanding of the circumstances? 8 A. I believe that it was negotiated in 9 a -- it didn't have, you know, three or four 10 months of negotiations, as far as I know. It 11 was done fairly quickly, although I don't know 12 how much time and how much due diligence was 13 done along the way. 14 Lehman had been in trouble for a 15 while, so I'm assuming a lot of firms were doing 16 some things, reviewing it to determine, you 17 know, if there was a, you know, a good place to 18 go in and buy and, you know, there possibly was 19 the Lehman executives might have been shopping 20 the firms. I don't know what happened, but I do 21 know that a lot of things happened fairly 22 quickly. 23 Q. Were you assuming that Barclays had 24 plenty of time to do due diligence before 25 settling on the terms of the transaction it was</p>

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<p>1 D. McIsaac 2 willing to enter into? 3 MR. OXFORD: Objection to the form. 4 A. I don't know how much time Barclays 5 had to do due diligence. I don't know how long 6 they were talking to Lehman and what information 7 they had. 8 And they were buying pretty much the 9 whole entity, so, you know, it's not like they 10 had to do due diligence on certain things. It 11 was a viable entity. It wasn't capital -- it 12 had adequate capital. You know, it didn't 13 appear that they were buying the broker-dealer, 14 that there was that much of a concern around it. 15 The customers were the customers. I don't know 16 if there was any major concern on the customers 17 they had. 18 Q. Do you have an understanding of what 19 the value of the entity was that Barclays was 20 acquiring? 21 MR. OXFORD: Objection to the form. 22 A. I believe if I looked at the August 23 Focus that was not filed, it showed a net -- a 24 net equity of I want to say 3 to 5 billion, if I 25 remember properly, correctly.</p>	<p>1 D. McIsaac 2 Q. What was that number? 3 A. 3 to 5 billion. 4 Q. What, in your opinion, would be a 5 typical amount of time for an entity to take 6 doing due diligence on an acquisition the size 7 of this one? 8 MR. OXFORD: Objection to the form. 9 A. I don't know how much time it would 10 take. They ended up buying certain businesses, 11 the customers' businesses, they bought assets 12 like the buildings, things of that nature, and 13 they bought some positions. How much time, I 14 don't know. I don't know how much time they 15 spent knowing what was going on. 16 In the Lehman case, you know, Lehman 17 was not in, from what I understand, capital, 18 severe capital -- it was a liquidity crunch, and 19 Lehman was having problems getting the 20 information, getting the money they needed to 21 support their assets. It didn't mean they 22 didn't have good assets, it didn't mean the 23 business was crumbling, it just meant they were 24 having a liquidity crunch. 25 I worked at Drexel. I saw what</p>
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<p>1 D. McIsaac 2 happened to Drexel. It didn't necessarily mean 3 the broker-dealer had a problem. There was 4 illiquidity at the parent company, and that 5 trickles down. 6 Q. Do you mean to suggest that there was 7 not a significant amount of risk that Barclays 8 was encountering in acquiring this business? 9 MR. OXFORD: Object to the form. 10 A. I didn't say there wasn't a 11 significant amount of risk. I think there was a 12 discernible amount of risk. I think that buying 13 customer positions, customer business, not that 14 risky a business. Looks like they didn't buy 15 the prime broker, which would have been the more 16 risky of the customer businesses. 17 Futures clearing is not what I would 18 consider a very risky business. They bought 19 certain assets, again, not everything that was 20 what I consider ultimately, you know, extremely 21 risky. 22 Q. You're not an expert in risk 23 management or risk assessment; is that right? 24 MR. OXFORD: Objection to the form. 25 A. General knowledge of risk I have. I'm</p>	<p>1 D. McIsaac 2 not a quant. I don't, you know, determine the 3 value what risk for a firm. I understand what 4 assets are risky, what assets are not risky at a 5 firm, what businesses are risky, what businesses 6 are not risky, and I think, you know, in a firm 7 of this size, it was a top, you know, three or 8 four broker-dealer in the country for a long 9 period of time. So, yes, there were risks 10 there, but I think they were quantifiable. 11 Q. Do you know how long it would take to 12 assess the risk profile in a set of equities 13 positions and options positions that was \$70 14 billion on the long side and \$69 billion on the 15 short side? 16 MR. OXFORD: Object to the form. 17 A. I don't think equities were the total 18 70 and 69. I think there were a portion of 19 that. I think a large portion of that inventory 20 was government securities. 21 Q. Do you know how much government 22 securities were in that versus equities versus 23 exchange-traded derivatives? 24 A. I believe at one point in time I saw 25 something that sort of broke it down, but I</p>

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<p>1 D. McIsaac 2 don't remember exactly, but I believe equities 3 were probably maybe 10 billion range. 4 Q. Would you have experience that would 5 qualify you to assess the risk profile 6 associated with a set of positions of that size? 7 MR. OXFORD: Object to the form. 8 A. On a daily basis they are required to 9 maintain capital. They have to assess their 10 capital every day. Part of their capital is 11 assessing the risk. They were on a daily basis 12 assessing the risk of their capital. You could 13 have easily used that information to determine 14 where the risk was and, you know, from that 15 standpoint, yes, determine the risk. When I 16 file reports, I'm looking at the risk of the 17 firm. 18 Q. When you described the circumstances 19 of the transaction between Lehman and Barclays 20 on page 7 of your report, did you consider among 21 those circumstances the options that Lehman had 22 to the deal with Barclays? 23 MR. OXFORD: Object to the form. 24 A. The options that Lehman had? I guess 25 Lehman could have decided to sell or not sell.</p>	<p>1 D. McIsaac 2 Q. Could they have decided to sell to a 3 different entity? 4 A. I'm sure they could have. 5 Q. Could you pull Exhibit 442 out. 6 That's the sale hearing transcript. 7 A. Uh-huh. 8 Q. And turn to page 101. 9 A. Yes. 10 Q. If you read the first three paragraphs 11 or, you know, if you need to read a little bit 12 more to get context. 13 (Document review.) 14 A. Okay. 15 Q. In the second paragraph, it says, 16 "And, yet, he would say nobody has expressed an 17 interest to step into the shoes of -- excuse me, 18 step into the shoes of Barclays, your Honor." 19 The next paragraph says, "Lehman has not 20 received any other interest since the 21 commencement of the Chapter 11 cases." And it 22 goes on to say, "If Lehman was approached by 23 another potential buyer that he would consider 24 the offer, provided that the company had 25 sufficient liquidity to operate the business</p>
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<p>1 D. McIsaac 2 without jeopardizing customer accounts. That 3 has not happened, your Honor. So it is almost 4 academic." Do you see that? 5 A. Yes, I do. 6 Q. Had you read this testimony in 7 preparing for your -- or, in preparing your 8 expert report? 9 A. I read this report in the -- when I 10 first started working with the Trustee regarding 11 the motion, the motion on the 3-3. 12 Q. You testified a moment ago that you 13 were sure Lehman could have sold the assets to a 14 different buyer. Does this refresh your 15 recollection at all on the circumstances that 16 Lehman was facing at the time? 17 A. This says they have no buyers. It's 18 Chapter 11. The Fed was providing them with 19 liquidity earlier in the week before Barclays 20 stepped into the shoes. The Fed could have 21 continued to provide liquidity while they were 22 looking for another purchaser. 23 That has happened before. If they 24 stepped in the shoes once before, I assume 25 things could have been done, still been done in</p>	<p>1 D. McIsaac 2 that fashion. 3 Q. Do you agree that the court is being 4 told at the September 19th sale hearing that it 5 is almost academic for Lehman to find another 6 potential buyer at that point? 7 A. That's what it looks like here, yes, 8 but I -- 9 Q. And if you -- 10 A. Excuse me. But it also says they 11 weren't marketing the firm in the first 12 paragraph on that page. So maybe if they did, 13 they might have been able to find other buyers. 14 Q. Okay. Can you read the second 15 paragraph for me? "That notwithstanding the 16 lack of a specific program for marketing, the 17 sale of Lehman's broker-dealer business has been 18 known worldwide. And, yet, he would say nobody 19 has expressed an interest to step into the shoes 20 of -- excuse me, step into the shoes of 21 Barclays, your Honor." 22 A. Uh-huh. 23 Q. Do you see that? 24 A. Yes. 25 Q. Do you agree that the speaker in this</p>

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<p>1 D. McIsaac</p> <p>2 testimony is suggesting that they were not able</p> <p>3 to find another buyer for the business?</p> <p>4 A. No, I believe he's saying that it was</p> <p>5 known that the business might be for sale and</p> <p>6 nobody else has stepped up, but I believe the</p> <p>7 first paragraph says that they were not going</p> <p>8 out and marketing the sale of the business.</p> <p>9 Q. Do you have any understanding of why</p> <p>10 they weren't going out and marketing the</p> <p>11 business?</p> <p>12 A. No, I do not.</p> <p>13 Q. Could it be because they didn't have</p> <p>14 time to market the business because the</p> <p>15 transaction needed to close by the following</p> <p>16 Monday?</p> <p>17 A. This says the business has been known</p> <p>18 worldwide, so I don't know why it had to</p> <p>19 close -- I don't know what happened that made it</p> <p>20 have to close within a week's period.</p> <p>21 Q. Okay.</p> <p>22 A. If I looked at the financial</p> <p>23 statements that were not filed but prepared, it</p> <p>24 looked like they had adequate capital for the</p> <p>25 broker-dealer.</p>	<p>1 D. McIsaac</p> <p>2 Q. Okay. Can you turn to page 73. If</p> <p>3 you review where the court asks a question in</p> <p>4 the middle of the page, "In order for this</p> <p>5 transaction to be optimally closed from the</p> <p>6 perspective of SIPC, when should it close? Does</p> <p>7 it need to close this weekend before the markets</p> <p>8 open on Monday?"</p> <p>9 A. I'm sorry, I lost where you're</p> <p>10 reading.</p> <p>11 Q. Page 73.</p> <p>12 A. Yes, I'm on 73. I see, "The Court:</p> <p>13 Let me ask a question."</p> <p>14 Q. Oh, the next statement.</p> <p>15 A. I'm sorry.</p> <p>16 (Document review.)</p> <p>17 A. Uh-huh. Okay.</p> <p>18 Q. So you see where Mr. Caputo says to</p> <p>19 the court, in response to the court's question,</p> <p>20 "As soon as possible it needs to close. The</p> <p>21 sooner the better." Do you see that?</p> <p>22 A. Yes.</p> <p>23 Q. On the following page, the court asks,</p> <p>24 "Would it be your position on behalf of your</p> <p>25 client that, assuming the transaction, the sale</p>
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<p>1 D. McIsaac</p> <p>2 transaction that has been proposed to me today</p> <p>3 is approved, that the approval should happen</p> <p>4 before the close of today's hearing? In other</p> <p>5 words, we should stay here as late as we need to</p> <p>6 in order to get this done?" And Mr. Caputo</p> <p>7 says, "Yes, your Honor. That would be our</p> <p>8 recommendation." Do you see that?</p> <p>9 A. Yes.</p> <p>10 Q. Does this suggest to you that the</p> <p>11 transaction under contemplation did not need to</p> <p>12 close by Monday, September 22, 2008?</p> <p>13 A. I believe in the prior response by Mr.</p> <p>14 Caputo he said as soon as possible, and nothing</p> <p>15 was forcing Barclays to close this agreement.</p> <p>16 They did not have to do it if they didn't think</p> <p>17 they had done sufficient due diligence to -- to</p> <p>18 mandate a purchase of an asset like this.</p> <p>19 Q. Would you agree that at this sale</p> <p>20 hearing, which you read the transcript of, the</p> <p>21 parties were telling the court that it was</p> <p>22 critical to get this deal done within a matter</p> <p>23 of days?</p> <p>24 MR. OXFORD: Object to the form.</p> <p>25 A. I believe that's what was said here.</p>	<p>1 D. McIsaac</p> <p>2 I don't -- I haven't read anything here, or I'd</p> <p>3 have to go back and read the whole thing, of</p> <p>4 what Barclays was saying why it would be</p> <p>5 critical for Barclays to get it done.</p> <p>6 Q. Do you believe that you are in a</p> <p>7 better position than the parties who were</p> <p>8 negotiating this deal and representing it to the</p> <p>9 court to determine the urgency of the closing of</p> <p>10 this transaction?</p> <p>11 MR. OXFORD: Object to the form.</p> <p>12 A. No, I think the urgency was on</p> <p>13 Lehman's side, not necessarily on Barclays'</p> <p>14 side. Barclays, if they didn't feel they had</p> <p>15 done enough due diligence and didn't feel they</p> <p>16 had adequate time to review it, didn't have to</p> <p>17 go through with it at that point in time.</p> <p>18 Q. Would you agree that in a transaction</p> <p>19 where one party has an urgency to complete a</p> <p>20 deal and another party doesn't, that there is a</p> <p>21 disparity in bargaining power as between those</p> <p>22 two entities?</p> <p>23 MR. OXFORD: Objection.</p> <p>24 A. Yes, but I'm not sure which way. If I</p> <p>25 don't sell it, what happens? I'm out of</p>

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<p>1 D. McIsaac 2 business. If I sell it, I'm still out of 3 business. 4 So if the parent company is selling 5 the business or if the broker-dealer, they're 6 selling the business, they have a decision to 7 whether or not they sell it or not sell it. You 8 know, this isn't a sale where I'm trying to sell 9 something and, you know, just get rid of some 10 bad assets and go on. 11 Q. And we saw earlier that the OCC had 12 threatened to liquidate LBI's accounts if it 13 didn't close this transaction by the 22nd of 14 September; is that right? Do you recall that? 15 A. Yes, but the one thing the OCC said 16 they would liquidate was that the customer and 17 proprietary or just the customer -- just 18 proprietary accounts? 19 Q. Sure, we can look at the exhibit 20 together. It was Exhibit 630. 21 A. Uh-huh. 22 Q. And it was on the second page under 23 paragraph 3, and it says, "OCC would need to 24 immediately liquidate and close out the LBI 25 accounts, and is preparing to do so."</p>	<p>1 D. McIsaac 2 A. Right, but I, after -- I don't 3 remember which -- I think you showed me this and 4 then you showed me something from the CME, and 5 the CME just liquidated the proprietary 6 accounts. It didn't liquidate the customers. 7 Q. The OCC wasn't drawing a distinction 8 in that, do you see that? 9 A. Well, I don't know if they were -- it 10 says "the accounts," so I'm assuming they meant 11 all, but it looks like, you know, they could 12 have drawn the same distinction that the CME did 13 and just liquidate the proprietary business if 14 they were concerned. 15 Q. They could have? 16 A. Yes. 17 Q. But that's not what they're indicating 18 in this paragraph, would you agree? 19 A. That's not what it looks like the 20 counsel was stating. 21 Q. If the Lehman Trustee believed that a 22 liquidation of the OCC accounts would result in 23 a depletion of all of the posted margin, would 24 it have been rational for the LBI Trustee to 25 agree to transfer those accounts to Barclays in</p>
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<p>1 D. McIsaac 2 exchange for the posted margin? 3 MR. OXFORD: Objection to the form. 4 Assumes facts not in evidence. 5 A. If they looked at it and I guess 6 assumed that they would lose whatever the number 7 was, let's say \$2 billion, or transferred 8 something like \$2 billion, yes, it would make, I 9 guess, sense to do it or, you know, if there was 10 a better good to be had by it, but I don't know 11 if that analysis was done. You said it was a 12 very short time, so I'm not sure if they had 13 time to analyze that. 14 Q. If you turn in your report to page 6, 15 you say in paragraph 18 that, "In addition to 16 the net asset value, I would expect a purchaser 17 to pay a premium based on the anticipated 18 earnings of the clearing business." Do you see 19 that? 20 A. Uh-huh. 21 Q. Would you continue to have that 22 expectation in a circumstance in which there was 23 only one purchaser willing to acquire a 24 business? 25 A. I would guess their negotiating powers</p>	<p>1 D. McIsaac 2 would not be the same, but I would still expect 3 some payment for an ongoing business that was 4 going to reap benefits for the purchaser. 5 Certainly the purchaser would want to get it for 6 nothing. I think the seller would want to get 7 some value for the assets they were selling. 8 Q. But as you said, if the seller 9 believed that it wasn't going to get value in 10 the alternative, then it would have been 11 rational to sell it for nothing in order to 12 preserve the customer positions; is that right? 13 MR. OXFORD: Object to the form. 14 A. I don't think I said that. 15 I'm sorry, could you read back my -- I 16 don't think I said that. 17 Q. Earlier I asked you the question: "If 18 the Lehman Trustee believed that a liquidation 19 of the OCC accounts would result in a depletion 20 of all of the posted margin, would it have been 21 rational for the LBI Trustee to agree to 22 transfer those accounts to Barclays in exchange 23 for the posted margin?" And you said, "If they 24 looked at it and I guess assumed that they would 25 lose whatever the number was, let's say \$2</p>

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<p>1 D. McIsaac 2 billion, or transferred something like \$2 3 billion, yes, it would make, I guess, sense to 4 do it or, you know, if there was a better good 5 to be had by it, but I don't know if that 6 analysis was done." 7 A. Yes. 8 Q. You also said, just for the sake of 9 completeness, you said it was a very short time 10 so I'm not sure if they had time to analyze 11 that. 12 A. The Trustee in that case. 13 Q. Yes. 14 A. Yes. 15 Q. So the question and answer that I just 16 asked you was, earlier I asked you the question, 17 if the Lehman Trustee believed that a 18 liquidation of the OCC accounts would result in 19 a depletion of all of the posted margin, would 20 it have been rational for the LBI Trustee to 21 agree to transfer those accounts to Barclays in 22 exchange for the posted margin, and you said 23 that if they looked at it and, I guess, assumed 24 that they would loose whatever the number was 25 and so on.</p>	<p>1 D. McIsaac 2 A. Right. 3 MR. OXFORD: Hold on. Hold on. Is 4 there a question? You just have been 5 reading from the record, Trish, which you're 6 free to do, but if you could ask Mr. McIsaac 7 a question, then he could answer it. I 8 think that's the traditional way to go. 9 Q. If the Lehman Trustee believed that a 10 liquidation of the OCC account would result in a 11 depletion of all of the posted margin, would it 12 have been rational for the LBI Trustee to agree 13 to transfer those accounts to Barclays in 14 exchange for that margin? 15 MR. OXFORD: Objection. Asked and 16 answered. 17 You can answer it again. 18 A. I think I answered that question. You 19 posed another question when you went back to 20 read that. 21 Q. Unfortunately, I'm not able to find it 22 online. 23 A. Okay. That's the question you asked 24 that I didn't think was the same as that 25 question.</p>
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<p>1 D. McIsaac 2 Q. Are acquirers, in your experience, 3 generally willing to pay a premium if they are 4 the only potential acquirer for a business and 5 they know that going into a negotiation? 6 MR. OXFORD: Objection to the form. 7 A. I haven't been in negotiations where 8 that would be the case, but you still would 9 expect to pay some value for getting value. I 10 would think the seller would want some value. 11 Q. But a premium is valued -- what do you 12 define a premium to mean? 13 MR. OXFORD: Object to the form. 14 A. In my experience, you bought 15 businesses and paid a premium based on how much 16 you believe that that business will earn for you 17 over the next few years, and then that's the 18 base price plus you pay the net asset value of 19 the business you're buying if you're just buying 20 bits and pieces of the business. 21 So you pay a premium based on, you 22 know, potential benefits to your firm. I 23 believe in some of the pages I was reading 24 through here in the futures world, I think 25 people doing the due diligence believed that</p>	<p>1 D. McIsaac 2 they would make \$250 million in revenues over 3 the next year. So there's a lot of value there, 4 so maybe they saw value where other people 5 didn't. 6 Q. And would a reasonable -- would a 7 rational acquirer be willing to pay premium if 8 it believed paying a premium wasn't necessary to 9 close the deal? 10 MR. OXFORD: Object to the form. 11 A. I would assume they would try to get 12 value for nothing if they could. So if you're 13 saying would they pay a premium if they didn't 14 have to, that would be negotiated and whether or 15 not the seller would be willing to sell it for 16 that price. 17 Q. Can you turn to page 23 of your 18 report, please? Actually, if you could start at 19 page 22. I'd like to ask you some questions 20 about paragraphs 44 -- 54 and 55. 21 (Document review.) 22 A. Okay. 23 Q. In these two paragraphs you're talking 24 about the proprietary options positions that LBI 25 held in accounts at the OCC; is that right?</p>

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<p>1 D. McIsaac</p> <p>2 A. Yes.</p> <p>3 Q. At the end of paragraph 55, you say,</p> <p>4 "Certainly a rational seller would not include</p> <p>5 margin in a deal unless it was being compensated</p> <p>6 dollar for dollar." Do you see that?</p> <p>7 A. Uh-huh.</p> <p>8 Q. Can you explain what you mean by</p> <p>9 "compensated dollar for dollar"?</p> <p>10 A. They were giving other assets and I</p> <p>11 would assume they would be compensated for the</p> <p>12 assets. So if the value of the assets they were</p> <p>13 giving was \$100, I would expect them to be</p> <p>14 compensated \$100.</p> <p>15 The deal was to buy the portfolio of</p> <p>16 assets, not the margin that's posted to make</p> <p>17 sure that the firm complies with its obligations</p> <p>18 to the OCC.</p> <p>19 Q. So if there was, for example, a</p> <p>20 billion dollars in the proprietary options</p> <p>21 account posted as margin with the OCC, you</p> <p>22 believe that it would have been irrational for</p> <p>23 the Trustee to agree to transfer that account to</p> <p>24 Barclays for anything less than that same</p> <p>25 amount?</p>	<p>1 D. McIsaac</p> <p>2 MR. OXFORD: Object to the form of the</p> <p>3 question.</p> <p>4 A. I would expect the seller to look at</p> <p>5 the portfolio of assets that they were selling</p> <p>6 and to get the value for the portfolio of</p> <p>7 assets. So if they were selling long positions</p> <p>8 and short positions, I would expect them to get</p> <p>9 the net asset value for that, and if the buyer</p> <p>10 wanted the margin that was posted in addition, I</p> <p>11 would expect them to get the net asset value for</p> <p>12 the margin.</p> <p>13 Q. Just so that I understand your</p> <p>14 opinion, so if the positions in an account are</p> <p>15 worth negative a billion dollars on net, and the</p> <p>16 margin posted in an account were a billion</p> <p>17 dollars, are you suggesting that it would have</p> <p>18 been rational for the Trustee to transfer the</p> <p>19 account with the margin because they were</p> <p>20 offsetting positives and negatives?</p> <p>21 MR. OXFORD: Object to the form.</p> <p>22 Misstates the witness's testimony.</p> <p>23 You can answer again.</p> <p>24 A. I think what I said is there was a</p> <p>25 portfolio of assets, and you would look at the</p>
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<p>1 D. McIsaac</p> <p>2 net asset value of the portfolio of assets,</p> <p>3 which was the long positions and the short</p> <p>4 positions. And I don't look at it just as the</p> <p>5 options positions, I'd look at it as the whole</p> <p>6 inventory positions that they were purchasing,</p> <p>7 and they would pay value for what they were</p> <p>8 buying. If you were to include the posted</p> <p>9 margin, I would expect to pay extra value for</p> <p>10 that.</p> <p>11 Q. Dollar-for-dollar extra value?</p> <p>12 A. That's where I would start at least,</p> <p>13 yes.</p> <p>14 Q. Would it be irrational to accept</p> <p>15 anything less than dollar-for-dollar</p> <p>16 compensation for the posted margin?</p> <p>17 MR. OXFORD: Object to the form.</p> <p>18 A. That would be at the point in time you</p> <p>19 would negotiate what you want to sell it for. I</p> <p>20 would think it would be a negotiating point and</p> <p>21 it would be expressed in the contracts what you</p> <p>22 were buying and what you were receiving and how</p> <p>23 much you were paying for it.</p> <p>24 Q. Would it be rational for LBI to</p> <p>25 negotiate for compensation less than</p>	<p>1 D. McIsaac</p> <p>2 dollar-for-dollar compensation for the posted</p> <p>3 margin?</p> <p>4 MR. OXFORD: Objection to the form.</p> <p>5 A. I don't think so, because if they were</p> <p>6 getting net asset value, then you'd be almost</p> <p>7 providing the downside protection for the</p> <p>8 acquirer.</p> <p>9 Q. And the net asset value in the terms</p> <p>10 of this transaction was what?</p> <p>11 MR. OXFORD: Object to the form.</p> <p>12 A. I believe there was 40 something</p> <p>13 billion dollars of assets, less than that in a</p> <p>14 repo liability that was assumed by Barclays, I</p> <p>15 guess, and the long option value that I thought</p> <p>16 was about \$300 million.</p> <p>17 Q. So you are excluding from your</p> <p>18 equation the negative value of the LBI affiliate</p> <p>19 positions that were in the firm account at the</p> <p>20 OCC?</p> <p>21 A. I believe they weren't buying the</p> <p>22 affiliates business. That's what I've seen. So</p> <p>23 I thought they were negotiating to buy LBI's</p> <p>24 business and not the affiliates positions.</p> <p>25 Q. They were taking settlement</p>

<p style="text-align: right;">Page 118</p> <p>1 D. McIsaac 2 responsibility for the affiliate positions as 3 well, you agree with that? 4 A. From the TAA, yes. 5 Q. Where do you think Barclays was going 6 to turn to recover the losses on the short 7 affiliate positions in that account? 8 MR. OXFORD: Object to the form. 9 A. I don't know where they would turn. 10 I'm not sure why they would have assumed them. 11 Q. You saw that they assumed settlement 12 responsibility for all of the positions at the 13 OCC, correct? 14 A. I see that they assumed it, yes. 15 Q. Okay. Would it have been rational for 16 Barclays to assume settlement responsibility for 17 those positions knowing that LBI was in SIPC 18 proceedings and would not be able to reimburse 19 it for the costs of liquidating those positions? 20 MR. OXFORD: Object to the form. 21 A. I think it would have been rational to 22 negotiate what you were doing with those 23 positions and, if you had to take over clearance 24 and settlement of them, negotiate how you were 25 going to be remunerated for that.</p>	<p style="text-align: right;">Page 119</p> <p>1 D. McIsaac 2 Q. Would it be rational for the Trustee 3 to agree to transfer the posted margin that 4 secured those positions in exchange for Barclays 5 taking on the exposure for those positions? 6 MR. OXFORD: Objection to the form. 7 Asked and answered. 8 You can answer again. 9 A. I don't think it would have been to 10 transfer \$2 billion of margin to cover a 11 billion-dollar loss. I don't think you would 12 transfer that much, no. 13 Q. How about 1 billion, would that have 14 been rational for the Trustee to transfer? 15 A. It might have been. 16 MR. OXFORD: Object to the form. 17 THE WITNESS: Sorry. 18 Q. It might have been? 19 A. It might have been. At that point in 20 time, if they negotiated it and -- and, you 21 know, that's what the parties decided. 22 Q. So it's not your opinion that it would 23 have been irrational under any circumstances for 24 Lehman or the LBI Trustee to transfer posted 25 margin to Barclays in exchange for taking</p>
<p style="text-align: right;">Page 120</p> <p>1 D. McIsaac 2 settlement responsibility for the affiliate 3 positions; is that right? 4 MR. OXFORD: Object to the form. 5 A. I believe in my report I talked about 6 the proprietary positions. If they're assuming 7 affiliate clearance and settlement of affiliates 8 positions, that would be something they should 9 negotiate. You know, the parties there would 10 negotiate it and whatever they thought was valid 11 would be valid. 12 Would it be out of the realm to say, 13 yes, give me the market value of that? No. 14 Q. Would that be a rational resolution, 15 to give them the market value of that? 16 MR. OXFORD: Object to the form. 17 A. It would be rational to say this is 18 the cost of it, sure, or, you know, we'll 19 liquidate it, leave it in -- don't take those 20 positions, don't take that account. 21 I'm sure it could have been negotiated 22 with the OCC to transfer the customer accounts 23 separate from the proprietary accounts if that 24 was -- if that was everybody's desire. 25 Q. If you could turn -- I'm showing you</p>	<p style="text-align: right;">Page 121</p> <p>1 D. McIsaac 2 what has been marked as Exhibit 687. 3 (Exhibit 687, Trustee's Memorandum in 4 Further Support of His Motion for Relief 5 Pursuant to the Sale Orders or, 6 Alternatively, For Certain Limited Relief 7 under Rule 60(B) and in Opposition to the 8 Motion of Barclays Capital Inc. to Enforce 9 the Sale Orders and Secure Delivery of all 10 Undelivered Assets, marked for 11 identification, as of this date.) 12 Q. If you could turn to page 60. In 13 paragraph 136, the last two sentences, the 14 Trustee says in his brief, "For example, LBI 15 could have agreed to transfer to Barclays the 16 minimum margin assets that the OCC required to 17 secure LBI's liabilities to the OCC for LBI's 18 proprietary positions. Such a transfer arguably 19 would have cost LBI little because, in any 20 event, LBI could not have withdrawn the minimum 21 margin assets required by the OCC to secure 22 LBI's open positions." Do you see that? 23 A. Yes, I do. 24 Q. Do you agree with that statement? 25 A. Can I read the whole two paragraphs?</p>

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<p>1 D. McIsaac</p> <p>2 Q. Uh-huh.</p> <p>3 (Document review.)</p> <p>4 MR. OXFORD: Okay. And Mr. McIsaac,</p> <p>5 you should feel free, of course, not to just</p> <p>6 read those paragraphs, but the whole of the</p> <p>7 section to which Ms. Bloomer directs you.</p> <p>8 (Document review continues.)</p> <p>9 A. Okay. Now, I'm sorry, I've read it</p> <p>10 now, so ...</p> <p>11 Q. Okay. Directing you again to the last</p> <p>12 two sentences of paragraph 136, do you agree</p> <p>13 with the statement that, "LBI could have agreed</p> <p>14 to transfer the minimum margin assets that OCC</p> <p>15 required to secure all of the liabilities to the</p> <p>16 OCC for LBI's proprietary positions"?</p> <p>17 A. In context, it says, for example, they</p> <p>18 could have done it. They have also said that it</p> <p>19 could have been negotiated, so this was just one</p> <p>20 example of things that could have occurred.</p> <p>21 Q. And in the next sentence, it says,</p> <p>22 "Such a transfer arguably would have cost LBI</p> <p>23 little because, in any event, LBI could not have</p> <p>24 withdrawn the minimum margin assets required by</p> <p>25 the OCC to secure LBI's open positions." Do you</p>	<p>1 D. McIsaac</p> <p>2 see that?</p> <p>3 A. Yes.</p> <p>4 Q. Do you agree with that?</p> <p>5 A. In the context here, yes.</p> <p>6 Q. What do you mean in the context here?</p> <p>7 A. There's four paragraphs here</p> <p>8 explaining things they could have been done if</p> <p>9 it was negotiated. All I've said all along is</p> <p>10 this was something that should have been</p> <p>11 negotiated and decided upon by the parties prior</p> <p>12 to consummating the trade of the sale.</p> <p>13 Q. You said that the Trustee would have</p> <p>14 been irrational to agree to transfer the posted</p> <p>15 margin for anything less than dollar for dollar,</p> <p>16 isn't that right?</p> <p>17 A. For the proprietary --</p> <p>18 MR. OXFORD: Object to the form.</p> <p>19 Misstates the witness's testimony.</p> <p>20 You can answer.</p> <p>21 A. I was talking about proprietary</p> <p>22 assets. I don't know if this was talking about</p> <p>23 all the proprietary assets. The proprietary</p> <p>24 assets at the OCC, my understanding, were net</p> <p>25 long positions.</p>
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<p>1 D. McIsaac</p> <p>2 Q. This says that the transfer would have</p> <p>3 cost -- would arguably have cost LBI little</p> <p>4 because LBI could not have withdrawn the minimum</p> <p>5 margin assets required by the OCC to secure</p> <p>6 LBI's open positions.</p> <p>7 Could the Trustee have withdrawn the</p> <p>8 minimum margin requirements required by the OCC</p> <p>9 to secure the affiliate positions in the firm</p> <p>10 account?</p> <p>11 A. No, I do not believe so. Because</p> <p>12 they're in the account, they could not withdraw</p> <p>13 any of the minimum margin requirements.</p> <p>14 Q. Could LBI have withdrawn the minimum</p> <p>15 margin assets required by the OCC to secure</p> <p>16 LBI's customer accounts?</p> <p>17 MR. OXFORD: Object to the form. Do</p> <p>18 you have a specific timeframe in mind,</p> <p>19 Trish?</p> <p>20 MS. BLOOMER: No, I don't.</p> <p>21 A. I don't think they could have</p> <p>22 withdrawn any of the minimum margin requirements</p> <p>23 at that point in time.</p> <p>24 Q. For the customer accounts either?</p> <p>25 A. For the customer accounts or the</p>	<p>1 D. McIsaac</p> <p>2 proprietary accounts.</p> <p>3 Q. Outside of the OCC, could LBI have</p> <p>4 withdrawn the minimum margin assets required by</p> <p>5 other clearing organizations or clearing brokers</p> <p>6 to secure LBI's open positions?</p> <p>7 A. When you say "outside the OCC," what</p> <p>8 are you referring to? A little bit -- it's a</p> <p>9 very broad statement outside --</p> <p>10 Q. Sure. I'll give an example. Your</p> <p>11 understanding -- do you understand that LBI had</p> <p>12 a customer account open at the CME at the time</p> <p>13 the transaction closed?</p> <p>14 A. Yes.</p> <p>15 Q. Okay. Could LBI have withdrawn the</p> <p>16 minimum margin assets required by the CME to</p> <p>17 secure LBI's customer accounts?</p> <p>18 A. No.</p> <p>19 I'm sorry.</p> <p>20 MR. OXFORD: Sorry. Withdrawn.</p> <p>21 A. No.</p> <p>22 Q. And at any other place where there</p> <p>23 were open customer or proprietary accounts could</p> <p>24 LBI have withdrawn the minimum margin assets</p> <p>25 required to secure those open positions?</p>

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<p>1 D. McIsaac</p> <p>2 A. I don't believe they could have.</p> <p>3 You're making it broad, so I don't want to make</p> <p>4 a general statement, but my understanding, no,</p> <p>5 they could not have. But it didn't mean they</p> <p>6 had to give them away either.</p> <p>7 Q. Okay. The sentence says that "a</p> <p>8 transfer arguably would have cost little because</p> <p>9 LBI could not have withdrawn the minimum margin</p> <p>10 assets required to secure the positions."</p> <p>11 Would you agree that that same</p> <p>12 sentence applies not just to proprietary, but to</p> <p>13 any accounts for which LBI could not withdraw</p> <p>14 the minimum margin assets required?</p> <p>15 MR. OXFORD: Object to the form.</p> <p>16 You can answer.</p> <p>17 A. I would say the minimum margin</p> <p>18 requirements as it relates to the exposure of</p> <p>19 the positions would be transferred as long as</p> <p>20 they were not -- did not get adequate protection</p> <p>21 elsewhere. So in the second part where they</p> <p>22 talk about the customers' margin positions,</p> <p>23 the -- Barclays in the transfer of the</p> <p>24 customers' accounts I believe had adequate</p> <p>25 protection against the customers fulfilling</p>	<p>1 D. McIsaac</p> <p>2 their obligations. So, transferring those, they</p> <p>3 already got the margin that was provided by the</p> <p>4 customers to support that.</p> <p>5 Q. I'm showing you what has been marked</p> <p>6 as Exhibit 659A. If you could review the e-mail</p> <p>7 and the first attachment to the e-mail.</p> <p>8 Specifically, I would direct your attention to</p> <p>9 the first full paragraph on page 2 of the</p> <p>10 letter.</p> <p>11 (Document review.)</p> <p>12 A. You said the first two paragraphs,</p> <p>13 right?</p> <p>14 Q. I said the first full paragraph.</p> <p>15 A. I'm sorry, I read the first two, okay.</p> <p>16 Q. On page 2.</p> <p>17 A. Oh, on page 2. Okay. Sorry.</p> <p>18 (Document review.)</p> <p>19 A. Yes, okay, I've read those paragraphs</p> <p>20 that start "pursuant to."</p> <p>21 Q. Okay. Now, in this paragraph</p> <p>22 Barclays' counsel is writing to the CFTC about</p> <p>23 the customer accounts that LBI is going to be</p> <p>24 transferring. Do you understand that reference</p> <p>25 in the context of this letter to be referring to</p>
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<p>1 D. McIsaac</p> <p>2 the futures customer accounts?</p> <p>3 A. Yes.</p> <p>4 Q. The second sentence of that paragraph</p> <p>5 says, "Some of these accounts are accounts that</p> <p>6 contain no open commodity positions and accounts</p> <p>7 that are in deficit, within the meaning of</p> <p>8 Regulations 190.06(e)(1)(iv) and (v)," and then</p> <p>9 "17 C.F.R. Section 190.06(e)(1)(iv) and (v),</p> <p>10 respectively." Do you see that?</p> <p>11 A. Yes.</p> <p>12 Q. What do you understand this to mean</p> <p>13 when it says that "some of these accounts are</p> <p>14 accounts that are in deficit"?</p> <p>15 A. That would be accounts that had -- you</p> <p>16 had a receivable from the customer that exceeded</p> <p>17 any assets he had on deposit with you as the</p> <p>18 firm.</p> <p>19 Q. Okay. And you said in the answer to</p> <p>20 the last question that Barclays had adequate</p> <p>21 protection against the customers fulfilling</p> <p>22 their obligations. Were you assuming that the</p> <p>23 customer margin accounts were not in deficit?</p> <p>24 A. Are we talking about in the futures</p> <p>25 sense?</p>	<p>1 D. McIsaac</p> <p>2 Q. Uh-huh.</p> <p>3 A. In the futures sense, even if you're</p> <p>4 in deficit, the firm -- the FCM is required to</p> <p>5 make up that deficit to protect all the</p> <p>6 customers that are not in deficit. So they</p> <p>7 would have to lock up additional collateral.</p> <p>8 They're responsible for all the customers that</p> <p>9 they owe -- they have an obligation to where</p> <p>10 they owe them money or owe them net equity to</p> <p>11 cover them in their lockup. The deficits -- the</p> <p>12 customers or deficits, they would be required to</p> <p>13 top them off in the second secured calculation.</p> <p>14 Q. The customers would be required to --</p> <p>15 A. No, the firm would be required to top</p> <p>16 them off.</p> <p>17 Q. And if the firm was required to top</p> <p>18 off any deficits, is it your understanding that</p> <p>19 that would constitute customer property to which</p> <p>20 Barclays was entitled under the terms of this</p> <p>21 transaction even though it wasn't property</p> <p>22 deposited by any customer?</p> <p>23 MR. OXFORD: Object to the form.</p> <p>24 A. The way the seg and secured</p> <p>25 calculation works, you have a requirement on the</p>

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<p>1 D. McIsaac 2 top and you have where the assets are on the 3 bottom. The requirement would add back to your 4 requirement that deficit. So you'd be required 5 to lock up all moneys owed to all customers. 6 Q. Including money that the customers had 7 not deposited? 8 A. They would add it back. 9 MR. OXFORD: Object to the form. 10 Q. And when Barclays took over 11 responsibility for these accounts, did it 12 inherit those requirements? 13 MR. OXFORD: I object to the form. 14 A. Yes. 15 Q. And if there were margin deficits in 16 the customer accounts, what protection did 17 Barclays receive in this transaction if it 18 didn't receive any of the LBI assets that were 19 held in those accounts, that were held in the 20 customer's segregated and secured accounts? 21 MR. OXFORD: Object to the form. 22 Misstates his testimony. Assumes facts not 23 in evidence. 24 THE WITNESS: I'm sorry, can I answer 25 or --</p>	<p>1 D. McIsaac 2 MR. OXFORD: Yes. 3 THE WITNESS: I'm sorry. 4 Two things could have happened: They 5 could have decided not to take the customers 6 that were in deficit and had them 7 liquidated, liquidated them on the spot, and 8 they would have been topped up for that 9 potential loss by the firm making sure that 10 they covered the requirement which would 11 have been all the obligations to customers. 12 Q. I'm sorry, can you -- what was the 13 second option? You said two things could have 14 happened. I don't understand your answer. Can 15 you -- 16 A. They could have decided not to take 17 those customers. 18 Q. Okay. 19 A. Or, if they did take them, could have 20 liquidated their positions and closed them out. 21 Q. If there was a margin deficit, were 22 they protected in the event of a liquidation to 23 the full extent of the exposure on the 24 positions? 25 A. They would have --</p>
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<p>1 D. McIsaac 2 MR. OXFORD: Object. Object to the 3 form. 4 A. Sorry. They would have had some 5 minimal exposure from the time that the market 6 closed on one day to the market opened on the 7 next to liquidate the positions. 8 Q. How do you know that the exposure is 9 minimal if you don't know the size of the margin 10 deficit? 11 A. The positions are marked to market 12 every day. You have protected all of the 13 clients who have -- that you owe money to. You 14 have locked up -- all of that money has been 15 locked up. Then you go and you would liquidate 16 those accounts. 17 Whatever the cost is, because it's 18 marked to market every day, you only have that 19 fraction of from the time the market closed to 20 the time the market opened and you were able to 21 liquidate to lose any money on the liquidation. 22 And you could make money on the liquidation. 23 Q. But as the acquiring broker-dealer, 24 isn't it true that you're only, in your opinion, 25 under the structure of this transaction,</p>	<p>1 D. McIsaac 2 entitled to the customer property that was held 3 by LBI to secure those customer positions? 4 A. And that customer property is what it 5 would be locked up as assets pertaining to the 6 customer. That's for the obligations of the 7 customer. So you start out with your net 8 customer balances, you add back any deficits 9 that aren't fully secured, and that's your 10 obligations to your customers. And that's what 11 they would get in a transfer. 12 Q. Okay. So they would get property in a 13 customer's seg and secured account that wasn't 14 necessarily a customer's property; is that 15 right? 16 A. No, it would be the customer's 17 property. The customers gave you \$100. You'll 18 return -- they -- you have to set aside that 19 \$100 for the customers. 20 Q. If the customer account is in a margin 21 deficit, does that mean you have a receivable as 22 opposed to actual cash in that account? 23 A. Yes. And but for the customers that 24 you owe moneys to, you have to lock up all of 25 that money. So if a customer gives you \$100 and</p>

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<p>1 D. McIsaac</p> <p>2 another customer is in deficit for \$50, you have</p> <p>3 to lock up \$100. So you would be transferring</p> <p>4 all the assets that belong to the customers.</p> <p>5 You would then liquidate -- you would</p> <p>6 also transfer whatever assets the customer's in</p> <p>7 deficit because he may have securities -- he may</p> <p>8 have a receivable of \$20 and secured for \$10.</p> <p>9 You would have some security against it, but</p> <p>10 your exposure is only between the time of</p> <p>11 liquidation, from the close of the market to the</p> <p>12 open of the market to liquidate that account.</p> <p>13 Q. And that size of that exposure would</p> <p>14 depend on the quantity and size of the customer</p> <p>15 positions as well as the market volatility; is</p> <p>16 that right?</p> <p>17 A. It would depend on a lot of things.</p> <p>18 It also may be a very good receivable because</p> <p>19 maybe the customer went in deficit for a market</p> <p>20 move and he'll make -- he'll meet his call</p> <p>21 tomorrow morning.</p> <p>22 Q. If the customer positions were to, on</p> <p>23 net, drop in value between the day of the</p> <p>24 closing and the following day, is it fair to say</p> <p>25 that Barclays was exposed to the full risk of</p>	<p>1 D. McIsaac</p> <p>2 the amount of drop in value and did not receive</p> <p>3 protection against that risk from the customer</p> <p>4 property that it received?</p> <p>5 MR. OXFORD: Object to the form.</p> <p>6 Assumes facts not in evidence.</p> <p>7 A. Are we talking about just the customer</p> <p>8 who's in deficit or are we talking about the</p> <p>9 whole customer?</p> <p>10 Q. Any customer.</p> <p>11 A. No, there would be no difference for</p> <p>12 the other customers because you have market</p> <p>13 movement and you make market calls. Customers</p> <p>14 are required to meet their margin calls every</p> <p>15 day. Usually, a firm will have excess margin</p> <p>16 there to cover themselves. If they lose money,</p> <p>17 they bring in money and you -- you use that</p> <p>18 money to pay the exchanges.</p> <p>19 Q. And that assumes that the customers</p> <p>20 are creditworthy and pay their margin calls; is</p> <p>21 that right?</p> <p>22 A. That assumes that the customers meet</p> <p>23 their margins calls. If they don't meet their</p> <p>24 margin call, you liquidate them.</p> <p>25 Q. Would you agree that credit risk is</p>
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<p>1 D. McIsaac</p> <p>2 more substantial in a volatile market?</p> <p>3 MR. OXFORD: Object to the form.</p> <p>4 A. I think credit risk is dependent on</p> <p>5 who your counterparties are. I believe, from</p> <p>6 what I saw in the due diligence done by the</p> <p>7 Barclays people, that it was mainly</p> <p>8 institutional customers that were in their</p> <p>9 futures business. Based on that, I would tend</p> <p>10 to think that they would be viable</p> <p>11 counterparties to meet their obligations.</p> <p>12 Q. Is credit risk greater in a recession</p> <p>13 than it is in a -- under stable market</p> <p>14 conditions?</p> <p>15 MR. OXFORD: Object to the form.</p> <p>16 A. The credit risk is dependent on the</p> <p>17 customer and the positions they have. They</p> <p>18 could be betting that the market goes down and</p> <p>19 making a ton of money.</p> <p>20 So I don't know what the positions</p> <p>21 that the customers had, in what markets they</p> <p>22 were trading, and what effect that was happening</p> <p>23 at September 19 that would have affected</p> <p>24 individual customers' positions, you know, so</p> <p>25 there was I don't believe a recession on</p>	<p>1 D. McIsaac</p> <p>2 September 19, but I don't know.</p> <p>3 Q. Do you -- did you base your opinion on</p> <p>4 the understanding that there was not a recession</p> <p>5 as of September 19, 2008?</p> <p>6 A. It doesn't matter to me if there was</p> <p>7 or wasn't or if we were or were not in a</p> <p>8 recession. People pay their bills when they're</p> <p>9 in a recession and when there's not a recession.</p> <p>10 These are not individual customers, primarily.</p> <p>11 These are institutions, from what I've</p> <p>12 understood.</p> <p>13 Q. So it has no bearing on your opinion</p> <p>14 that the country was in a recession -- if the</p> <p>15 country were in fact in a recession at the time</p> <p>16 this transaction was negotiated?</p> <p>17 A. It would matter what the customers had</p> <p>18 and the positions they had and who the customers</p> <p>19 were.</p> <p>20 Q. Would it matter at all to your</p> <p>21 opinion, at all to your opinion, whether or not</p> <p>22 there was a recession at the time that this deal</p> <p>23 was negotiated in terms of assessing the risks</p> <p>24 associated with the transaction?</p> <p>25 A. You assess the risk of the customers</p>

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<p>1 D. McIsaac 2 and the market environment at that point in time 3 and the customer's position. I don't know if a 4 recession has anything to do with the viability 5 of a futures customer paying their margin 6 requirements. 7 Q. You just said you assess the risk of 8 the customers and the market environment at that 9 point in time. Are you agreeing that the market 10 environment at that point in time is relevant to 11 an assessment of the risks associated with a 12 transaction of the type that Barclays 13 consummated with Lehman Brothers in September of 14 2008? 15 MR. OXFORD: Object to the form. 16 A. The market environment in relation to 17 the positions that the customers had on. If the 18 market's going down and the customers were 19 betting that the market is going to go down, 20 they're not a credit risk. So you have to 21 analyze the customers, the types of positions 22 they are, their familiarity with the market, and 23 your belief on where the market goes and whether 24 or not you have adequate collateral. 25 Q. Okay. I'm going to try to ask the</p>	<p>1 D. McIsaac 2 question one more time, and if you could just 3 answer the question that I'm asking. 4 Would it matter at all to your opinion 5 whether or not there was a recession at the time 6 that this deal was negotiated in terms of 7 assessing the risks associated with the 8 transaction? Would that matter to your opinion? 9 MR. OXFORD: Object to the form. It's 10 been asked and answered a number of times. 11 You can answer it again. 12 A. I would not care if there was a 13 recession in analyzing individual customer's 14 ability to meet their obligations. 15 Q. Thank you. 16 MR. OXFORD: Trish, if you can let me 17 know when you think it's a good time to 18 break for lunch? It's 1. 19 MS. BLOOMER: Just like five more 20 minutes, if that's okay with everyone. 21 MR. OXFORD: If it's okay with Mr. 22 McIsaac, it's okay with me. 23 MS. BLOOMER: Okay. Thanks. 24 Q. Could you turn back in your expert 25 report to page -- oh, I'm sorry. Could you turn</p>
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<p>1 D. McIsaac 2 in the Trustee's brief, which was Exhibit -- 3 MR. OXFORD: 687. 4 Q. 687. 5 MS. BLOOMER: Thanks, Neil. 6 Q. To page 60. 7 A. Page 60. 8 Q. We were talking earlier about the 9 sentence in the Trustee's brief in which they 10 say that a transfer to Barclays of the minimum 11 margin assets required by the OCC to secure 12 LBI's open positions would arguably have cost 13 LBI little. Do you recall earlier discussing 14 that? 15 A. Yes. 16 Q. Are you aware that the margin 17 requirements at the OCC were shifting by \$500 18 million a day during the week of September 15 on 19 multiple days? 20 MR. OXFORD: Objection to form. 21 Misstates -- 22 A. I believe -- 23 MR. OXFORD: -- the record. 24 A. Sorry. 25 I believe you showed me a document</p>	<p>1 D. McIsaac 2 that showed it going up and then drastically 3 down on the 19th. 4 Q. Perhaps we can look at that document. 5 I believe it was the declaration of Craig Jones. 6 A. Right, Exhibit 1. 7 Q. In Exhibit 1. 8 Do you recall that between the 15th 9 and the 16th the margin requirement went up by 10 over \$500 million, do you see that? 11 A. Yes, I do. 12 Q. And then between the 17th and 18th -- 13 well, between the 16th and the 17th it went up 14 another 45 million or so dollars, do you see 15 that? 16 A. Uh-huh. Yes. 17 Q. And then it goes up over \$600 million 18 between the 17th and the 18th? 19 A. Yes. 20 Q. So between the 15th and the 18th, you 21 see that the margin requirement increased by 22 over \$1.2 billion? 23 A. Yes, I see that. 24 Q. Okay. And then it dropped by 25 approximately \$400 million on that last day of</p>

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<p>1 D. McIsaac 2 the week, do you see that? 3 A. Yes. 4 Q. Would it have been rational for the 5 Trustee, assuming he was aware of the swings in 6 the margin requirements, to believe that it 7 would have arguably cost LBI little to transfer 8 even more than the minimum margin assets given 9 the risk that those margin requirements could 10 increase dramatically over the following day 11 after the transaction? 12 MR. OXFORD: Object to the form. 13 Assumes facts not in evidence. 14 A. I believe you would have to assess 15 what your exposure was there, assess whether or 16 not the margin requirements might have been 17 inflated by the OCC for whatever reason, and 18 determine what your potential risk or what you 19 think the risk is and negotiate from there. 20 Q. Regardless of whether the OCC's margin 21 requirements were inflated or what the reason 22 for them was, you agree that LBI couldn't 23 withdraw anything beyond -- anything that would 24 bring the posted margin below the minimum margin 25 assets required, right?</p>	<p>1 D. McIsaac 2 A. Correct. 3 Q. And you see that the margin 4 requirements increased by \$1.2 billion in a 5 matter of four days during the week of September 6 15, correct? 7 A. I see that they increased and then 8 decreased. 9 Q. Would it be rational for a seller, in 10 light of these margin requirement movements, 11 during the week of September 15, 2008, to 12 believe that there was a risk that the margin 13 requirements would increase again substantially 14 on September 22 and September 23? 15 MR. OXFORD: Object to the form. 16 Assumes facts not in evidence. 17 A. In light of triple-witching day, I 18 don't know if -- if LBI was putting on 19 additional positions during the week or the 20 positions that would close out on Friday would 21 have -- what impact they would have on the 22 margin requirement. 23 I can't answer a question of where I 24 think the margin requirement is going to go 25 without having any idea what the positions were</p>
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<p>1 D. McIsaac 2 and how they had them already covered. Maybe 3 the margin requirement was on shorts that we had 4 long positions already sitting in the account 5 and they would have been covered. 6 Q. Do you know how many positions were in 7 the proprietary accounts at the OCC? 8 MR. OXFORD: Object to the form. Do 9 you have a particular day? 10 MS. BLOOMER: On the 19th of 11 September. 12 A. I believe there were tens of thousands 13 of positions in there that date that included 14 the affiliates, subordinated affiliates 15 accounts. 16 Q. So if a Trustee were to want to 17 assess -- or, if LBI, I apologize, were to want 18 to assess the impact that the expiration weekend 19 would have on the margin requirements, how long 20 would it take the LBI -- LBI to conduct that 21 analysis? 22 MR. OXFORD: Object to the form. 23 A. I would assume LBI, if their systems 24 were like any other systems on the street, would 25 have been able to analyze that fairly quickly.</p>	<p>1 D. McIsaac 2 They -- they have risk systems that would 3 quantify this and they would know what their 4 exposure was as of close of business. 5 MS. BLOOMER: I think this is probably 6 a good time to take our break for lunch. 7 MR. OXFORD: Okay. Thanks. 8 THE VIDEOGRAPHER: The time is 1:05. 9 This is the tape labeled number 3. We're 10 going off the record. 11 (Luncheon recess.) 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>

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<p>1 D. McIsaac 2 AFTERNOON SESSION 3 DANIEL McISAAC, resumed and 4 testified further as follows: 5 THE VIDEOGRAPHER: This is the start 6 of tape labeled number 4. The time is 2:05. 7 We're back on the record. 8 EXAMINATION BY (Cont'd.) 9 MS. BLOOMER: 10 Q. Good afternoon. 11 A. Good afternoon. 12 Q. I'm showing you a document that's been 13 marked as Exhibit 648. This is a declaration 14 that was submitted by Eric Clark. Are you 15 familiar with this declaration? 16 A. I believe I've seen it, yes. 17 Q. And did you see it preparing for your 18 deposition today? 19 A. I think I might have seen it, but I 20 don't recall if it was in preparing or not. But 21 I know I've seen the declaration. 22 Q. Do you believe you saw it -- do you 23 believe you saw it prior to when you submitted 24 your expert report? 25 A. Yes.</p>	<p>1 D. McIsaac 2 Q. On exchange-traded derivatives issues? 3 A. Yes. 4 Q. Yes? 5 A. Yes. 6 Q. If you could turn to the second page, 7 paragraph 6, and review that and let me know 8 when you've had a chance to look at it. 9 (Document review.) 10 A. Yes. 11 Q. Okay. In this paragraph, Mr. Clark 12 says that the OCC options were not immediately 13 brought onto Barclays' systems, as the systems 14 were not capable of incorporating the LBI OCC 15 options. Do you see that? 16 A. Yes. 17 Q. Do you have any reason to doubt the 18 accuracy of that statement? 19 A. No, I do not. 20 Q. In the next sentence he says, "The 21 delay in moving the options on the Barclays' 22 systems created difficulties for Barclays' Risk 23 Management Team in terms of their ability to 24 manage the risk associated with these positions 25 effectively during the interim period."</p>
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<p>1 D. McIsaac 2 Do you see that? 3 A. Yes. 4 Q. Do you have any reason to doubt the 5 accuracy of that statement? 6 A. No, I do not. 7 Q. Have you seen anything in the record 8 that suggests that Barclays did have the ability 9 to manage the risk associated with these 10 positions prior to the time it was able to 11 incorporate them onto its system? 12 MR. OXFORD: Object to the form. 13 A. I believe I did see something where 14 they were trying to risk-manage the positions 15 for a period of time and then turned them back 16 to the Lehman traders to manage the risk. 17 Q. Okay. And do you believe that what 18 you saw led you to conclude that that risk 19 management during that period of time was 20 effective? 21 MR. OXFORD: Object to the form. 22 A. I don't know if I saw enough within 23 that to determine if it was totally effective. 24 Q. What would you consider to be an 25 effective hedge program in terms of the</p>	<p>1 D. McIsaac 2 relationship between losses on underlying 3 positions, for example, and gains onto hedge 4 positions? 5 MR. OXFORD: Object to the form. 6 A. I would assume, having them roll up 7 into a system, that you would be able to monitor 8 both sides of the positions, be able to monitor 9 the options as well as the equity into one 10 straight -- one flow-through system, for lack of 11 better words. 12 Q. If Barclays were attempting to hedge a 13 set of options positions, and those options 14 positions lost \$500 million in value over a 15 discrete period of time, would you consider an 16 effective hedge if the hedge positions that 17 Barclays placed only gained \$150 million during 18 that same time? 19 A. I don't know if their objective was to 20 fully hedge the position. Most trading books do 21 not fully hedge because then there would be no 22 gain or loss unless you were just trying to play 23 the -- the gain or loss when you put on the 24 contract. So most traders don't fully hedge 25 their positions.</p>

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<p>1 D. McIsaac 2 But I don't know if that was 3 effective. Their goal might have been to only 4 hedge a portion of it. 5 Q. Assuming their goal was to fully hedge 6 the position, would you agree that a hedge that 7 only gained \$150 million against underlying that 8 lost \$500 million was an ineffective hedge? 9 MR. OXFORD: Object to the form. 10 Assumes facts not in evidence. 11 A. If you were trying to hedge the entire 12 portfolio and you put on hedges that didn't 13 replicate it, that would have been an 14 ineffective hedge. 15 Q. If you would turn in your report to 16 page 3 -- I'm sorry, page 4, sub-bullet 3 at the 17 top of the page. It says there that, "Any 18 ongoing market risk associated with the 19 proprietary exchange-traded derivatives that 20 Barclays acquired could be and was mitigated by 21 Barclays by hedging these positions." Do you 22 see that? 23 A. Yes. 24 Q. And then if you turn to page 7, 25 paragraph 22, you say, "I would assume that the</p>	<p>1 D. McIsaac 2 purchaser would have anticipated that the short 3 exchange-traded derivatives positions would be 4 hedged by certain long equity positions in LBI's 5 total portfolio." Do you see that? 6 A. Yes. 7 Q. Are you familiar with the various 8 trading strategies that a broker-dealer could 9 undertake for a proprietary portfolio? 10 MR. OXFORD: Object to the form. 11 A. Somewhat, yes, sure. 12 Q. Are long equity positions the only 13 positions that would interact with 14 exchange-traded derivatives positions in terms 15 of the full portfolio? 16 MR. OXFORD: I'll object to the form 17 of the question. 18 A. Yes, I'm not sure really what the 19 question is. I'm not sure what you're -- 20 Q. Is it possible that short 21 exchange-traded derivatives positions would be 22 hedged by anything other than long equity 23 positions in a broker-dealer's portfolio? 24 A. Yes. 25 Q. Can you give me an example?</p>
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<p>1 D. McIsaac 2 A. A short put might be hedged by a short 3 position in a portfolio. A short option could 4 be hedged by a long option. An index could 5 hedge a portfolio of a basket of other options. 6 Q. And could over-the-counter positions 7 also be used to hedge exchange-traded 8 derivatives positions? 9 A. I would tend to think normal course 10 would be to use exchange-traded derivatives to 11 hedge over-the-counter derivatives. 12 Q. Okay. And if you were to have 13 purchased an exchange-traded derivatives 14 position in order to hedge an over-the-counter 15 position, would the acquirer of the 16 exchange-traded derivatives position be 17 considered to have a naked position in the event 18 it didn't also acquire the corresponding 19 over-the-counter derivative? 20 MR. OXFORD: Object to the form. 21 A. I think if the question you're asking 22 is if there was an over-the -- exchange-traded 23 option hedging an over-the-counter position, 24 that if you didn't assume the over-the-counter 25 position, would that single exchange-traded</p>	<p>1 D. McIsaac 2 option be naked? Unless you had something else 3 in your portfolio that was hedging it or could 4 be considered a hedge to it, yes. 5 Q. Is it your understanding that Barclays 6 was acquiring the over-the-counter derivatives 7 of LBI in the September 2008 transaction? 8 A. I do not believe they were. 9 Q. Is it fair to say, then, that Barclays 10 would have been reasonable in assuming that 11 there may be unhedged exchange-traded 12 derivatives positions in the portfolio it was 13 acquiring? 14 MR. OXFORD: Object to the form of the 15 question. Assumes facts not in evidence. 16 A. I don't know if there were 17 over-the-counter derivatives in the -- in LBI's 18 portfolio, nor do I know if they hedged them 19 with exchange-traded derivatives. The -- 20 Q. Is it possible that they did? 21 MR. OXFORD: Object to the form. 22 A. Yes, it's possible that could have 23 happened. 24 Q. And if that was the case, would that 25 position then not be fully hedged if you were</p>

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<p>1 D. McIsaac 2 taking the exchange-traded portfolio and not the 3 over-the-counter portfolio? 4 MR. OXFORD: Object to the form. 5 Asked and answered. 6 You can answer again. 7 A. Unless there was another security or 8 another transaction out there that that was 9 hedging. 10 Q. Okay. My question assumes that the 11 position is hedging the over-the-counter 12 position. Do you understand? 13 A. Yes, but there could be another 14 position that that would also act as a hedge 15 for. 16 Q. Do you -- does a broker-dealer 17 typically put duplicative hedges on its 18 portfolio? 19 A. No. What I meant is they could be 20 hedging this transaction. You take that 21 transaction off, it may be now a hedge for a 22 different security out there. All I'm saying 23 is, in the realm things, it could be hedging 24 another exposure. 25 Q. Is it fair to say that you wouldn't</p>	<p>1 D. McIsaac 2 assume as an acquirer that you were getting a 3 fully hedged portfolio if you were taking 4 exchange-traded derivatives and not 5 over-the-counter derivatives? 6 MR. OXFORD: Object to the form. That 7 assumes facts not in evidence. 8 A. I wouldn't assume anything. I would 9 inquire as to what I was purchasing and what the 10 various books were, and if I had exchange-traded 11 derivatives hedging an, you know, an 12 over-the-counter derivative book, I would assume 13 I'd find that out before I decided to buy the 14 unhedged exchange-traded derivatives. 15 Q. Okay. When you're -- if you were 16 considering an acquisition of tens of thousands 17 of exchange-traded derivatives positions, how 18 would you go about determining whether or not 19 those positions were hedged in full or in part 20 by over-the-counter derivatives or vice-versa? 21 A. I guess I'd ask the people who were 22 managing the over-the-counter derivative book if 23 they had exchange-traded derivatives in their 24 portfolio. 25 Q. And if the answer was yes, what would</p>
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<p>1 D. McIsaac 2 you do in order to determine the extent of the 3 naked exposure on those exchange-traded 4 derivatives in the event you weren't acquiring 5 the over-the-counter derivatives? 6 MR. OXFORD: Object to the form. 7 Assumes facts not in evidence. 8 You can answer. 9 A. I would ask them what their portfolio 10 of exchange-traded derivatives was that was 11 hedging it, specific portfolio. 12 Q. And would that require you to obtain 13 information not only about the positions that 14 were open in an exchange-traded derivatives 15 account, but also the relationship between those 16 positions and any over-the-counter positions? 17 A. No, I would just ask for a list of the 18 exchange-traded derivatives in his trading 19 portfolio book. 20 Q. And what would you do with that list? 21 A. I would, I guess, determine if I want 22 to buy those assets without the 23 over-the-counters positions that they may or may 24 not be hedging. 25 Q. Would you also try to determine at the</p>	<p>1 D. McIsaac 2 same time whether there were equities positions 3 that were hedging those positions? 4 MR. OXFORD: Object to the form. 5 Which positions are you talking about? 6 Q. The exchange-traded derivatives 7 positions that you were -- would be acquiring? 8 MR. OXFORD: Okay. Same objection. 9 You can answer. 10 A. I thought we started this by saying if 11 we had exchange-traded derivatives hedging an 12 over-the-counter book, well, how would I 13 determine that? And I think I said I would talk 14 to the people managing that book. I would 15 assume, and maybe that's a bad thing, I would 16 probably ask them also what other positions do 17 they have that's exchange-traded that is in the 18 portfolio that I might be acquiring. 19 Q. Okay. And you would want to analyze 20 the relationships between the exchange-traded 21 derivatives, the over-the-counter derivatives, 22 and the other long and short positions in the 23 portfolio that you were acquiring in order to 24 understand the relationships between the various 25 trades, is that fair?</p>

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<p>1 D. McIsaac 2 MR. OXFORD: Object to the form. 3 A. If I was not obtaining the 4 over-the-counter derivatives and had no reason 5 to know about them, I would try to assess the 6 exchange-traded derivatives and the equity 7 positions on the risk that it was -- that it 8 would give me perhaps to take over those 9 positions. I don't care what they did with the 10 over-the-counter if I'm not assuming that. 11 Q. Do you care what they did with the 12 over-the-counter if the over-the-counter 13 derivatives were related to the exchange-traded 14 derivatives or the fixed equity positions that 15 you were acquiring in terms of a hedge 16 relationship? 17 MR. OXFORD: Object to the form. 18 A. Again, if I'm not acquiring the 19 over-the-counter, why would I care their 20 relationship to the exchange-traded that I was 21 acquiring? I wouldn't care if it was a good 22 hedge or not because I wasn't acquiring the 23 over-the-counter. 24 Unless you're saying that I, in the 25 realm of possibility, I may decide to take over</p>	<p>1 D. McIsaac 2 the over-the-counter positions. 3 Q. Would you care if it was naked hedge 4 that you were acquiring, a naked position -- I'm 5 sorry. 6 Would you care if it was a naked 7 position that you were acquiring because you 8 weren't getting the over-the-counter position? 9 MR. OXFORD: Object to the form. 10 A. I would analyze that just as any other 11 position I was acquiring I would analyze. 12 Q. You say on the top of page 8 in your 13 expert report that, "Mr. Leitner appears to 14 assume that Barclays was, at least at the start 15 of the week, purchasing a book of business that 16 was at least partly hedged." 17 Is it your understanding that Barclays 18 was acquiring a book of business that was partly 19 hedged or that was fully hedged as of the 20 beginning of the week? 21 A. I don't know if I have an 22 understanding one way or the other. I don't 23 think anybody's business would be fully hedged, 24 because if you're fully hedged, then you don't 25 make money. So you would determine what hedges</p>
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<p>1 D. McIsaac 2 you wanted based on the risk that you wanted in 3 that book and where you thought your rewards 4 were. You wouldn't, for every long position, 5 have a corresponding short because then you 6 wouldn't make any money. 7 Q. Would you be qualified to do that 8 assessment yourself if you were advising on a 9 transaction of the type that Lehman and Barclays 10 entered into in September of 2008? 11 MR. OXFORD: Object to the form. I'm 12 not sure it's clear what assessment you're 13 asking about. 14 MS. BLOOMER: He can ask me to clarify 15 if he needs me to clarify, Neil. 16 A. I don't know, when you say "assess," 17 what you mean by it. 18 Q. You said you wouldn't for every long 19 position have a corresponding short because you 20 wouldn't make any money. You said you would 21 determine what hedges you wanted based on the 22 risk that you wanted in that book and where you 23 thought your rewards were. 24 Were you qualified -- are you 25 qualified, do you consider yourself qualified to</p>	<p>1 D. McIsaac 2 make those types of assessments in the 3 connection with a transaction of this type? 4 MR. OXFORD: Objection to the form. 5 A. What I was referring there is the 6 trader who's trading that book would make that 7 assessment. Firms have various people that 8 monitor what the traders are doing and there are 9 different risk managers that look at different 10 risk. 11 If you're asking me if I was long IBM 12 and short a call on AT&T, could I assess the 13 total risk on that, I would know that I have 14 exposure on two sides and I'm not hedged. Could 15 I tell you how much I could lose on each? No, 16 but firms will have systems that do that. 17 Lehman certainly had a system that did 18 that because they were on -- they were a CSE 19 firm so they certainly had value at risk and 20 they did -- they did analysis of what their 21 gains and losses were, and I'm -- what their 22 gains and losses could be based on the value at 23 risk, and I'm assuming that they had the 24 wherewithal to determine that. 25 Q. Do you have knowledge of how the</p>

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<p>1 D. McIsaac 2 process of assessing this risk and determining 3 what positions you are taking over would consist 4 of? 5 MR. OXFORD: Object to the form. 6 A. Again, you normally have a 7 businessperson determine what risk appetite he 8 had for his business and determine if the book 9 of business that they were selling he wished to 10 buy and it fit into his risk model. 11 Q. Do you know how long it would take 12 that person to do an analysis of the risk 13 profile of a portfolio of exchange-traded 14 derivatives and equities positions the size that 15 Barclays was acquiring in September of 2008? 16 A. I do not know how long it would take, 17 but I would assume that the systems already in 18 place at LBI would have spit that information 19 out. 20 Q. You think that you could hit a button 21 and print that information out; is that your 22 testimony? 23 MR. OXFORD: Object to the form. 24 Mischaracterizes the witness's testimony. 25 You can answer.</p>	<p>1 D. McIsaac 2 A. I believe Lehman had systems that 3 provided them with value at risk on a daily 4 basis. 5 Q. And do those systems that provide 6 value at risk on a daily basis tell you which 7 positions are hedging which positions so that if 8 you're not taking all of the positions, you know 9 what's at risk? 10 MR. OXFORD: Objection to the form. 11 A. I don't believe it will earmark every 12 naked position that's in the portfolio. It will 13 tell you the portfolio and what the anticipated 14 market movement could be in that portfolio. 15 Q. And if there are multiple portfolios, 16 and you're not taking all of them, would you 17 agree that it's not as simple as pressing a 18 button in order to determine the risk profile of 19 the portfolio that you're taking over? 20 MR. OXFORD: Object to the form. 21 Mischaracterizes the witness's testimony. 22 MS. BLOOMER: I'm asking him a 23 question. I'm not characterizing anything. 24 A. I would believe that the systems would 25 enable the management of Lehman to assess the</p>
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<p>1 D. McIsaac 2 risk at various levels, possibly down to the 3 individual trader, but at a minimum probably 4 down to the individual desk. 5 Q. Was it -- maybe I misunderstood your 6 testimony. Was it your testimony that the 7 systems wouldn't have information other than the 8 aggregate risk of a particular portfolio? So, 9 in other words, wasn't it your testimony that 10 the system wouldn't generate information that 11 would tell you which positions are hedged by 12 which other positions? 13 A. I believe what I said, and if I said 14 that, it's not what I meant to say, the system 15 would analyze your risk on a portfolio basis. 16 It may not at a top level spit out this position 17 is not hedged. In the makeup of the risk 18 matrix, it would give you information that you 19 need to see. 20 Q. What do you mean when you say "on a 21 portfolio basis"? 22 A. Well, on a trader level, on a desk 23 level, whatever the firm prescribes to be a 24 portfolio. 25 Q. And could any one portfolio include</p>	<p>1 D. McIsaac 2 both exchange-traded positions and 3 over-the-counter positions? 4 A. Sure. 5 Q. And if the system were to spit out a 6 report that showed the risk profile of a 7 portfolio that contained both exchange-traded 8 and over-the-counter derivatives, would that 9 report tell you which of those positions were 10 going to be naked in the event that the 11 over-the-counter derivatives were not to be 12 transferred with the exchange-traded positions? 13 A. There would probably be reports in the 14 system that would indicate all the individual 15 securities that are in that system. It may not 16 assess them separately as to the risk of that 17 one position that's hedged because it may be 18 looking to hedge on the total desk position, but 19 you would have the analysis of what was owned 20 and what the exposure was on that security. 21 Q. Do you know that or you -- you said 22 "probably." I would like to confirm. Do you 23 know that or not? 24 A. I would assume most risk systems would 25 have that information. I did not look at</p>

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<p>1 D. McIsaac</p> <p>2 Lehman's system and I can't determine whether or</p> <p>3 not they did, but I'm assuming that during the</p> <p>4 due diligence somebody would have looked at</p> <p>5 that.</p> <p>6 Q. During what due diligence?</p> <p>7 A. Barclays' due diligence.</p> <p>8 Q. And how long did Barclays have to do</p> <p>9 that due diligence?</p> <p>10 MR. OXFORD: Object to the form.</p> <p>11 Asked and answered.</p> <p>12 You can answer again.</p> <p>13 A. I don't know how long Barclays had to</p> <p>14 do the due diligence. I assume they had enough</p> <p>15 time to do it or else they would not have</p> <p>16 entered into the transaction.</p> <p>17 Somebody, I'm assuming, made an</p> <p>18 assessment of the risk of what they were buying</p> <p>19 and determining whether or not it fit into what</p> <p>20 they were looking for and they could afford to</p> <p>21 take on that risk.</p> <p>22 Q. Could it be that they agreed to take</p> <p>23 on the risk because they believed they were</p> <p>24 getting protection of the posted margin at the</p> <p>25 clearing corporations, is that possible?</p>	<p>1 D. McIsaac</p> <p>2 MR. OXFORD: Object to the form.</p> <p>3 A. I can't go into what they thought they</p> <p>4 were getting and weren't getting. I cannot tell</p> <p>5 you what is in their mind and what they were</p> <p>6 getting and what they weren't getting.</p> <p>7 Q. Is it possible that the reason they</p> <p>8 agreed to take on these positions was not</p> <p>9 necessarily because they had the time to do all</p> <p>10 of the due diligence, but because they believed</p> <p>11 they were getting posted margin as protection</p> <p>12 against some portion of those risks?</p> <p>13 MR. OXFORD: Objection to the form.</p> <p>14 Q. Is that possible?</p> <p>15 A. Which positions? We've talked about</p> <p>16 the portfolio. We've talked about cash</p> <p>17 positions and exchange-traded derivatives.</p> <p>18 What positions are we looking for</p> <p>19 margin to protect?</p> <p>20 Q. Is it possible that Barclays agreed to</p> <p>21 take over Lehman's exchange-traded derivatives</p> <p>22 portfolio because it believed that it was</p> <p>23 getting the margin that was posted to secure</p> <p>24 those positions as protection against any risk</p> <p>25 that may exist due to the fact that those</p>
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<p>1 D. McIsaac</p> <p>2 positions may or may not be naked exposures?</p> <p>3 MR. OXFORD: Objection. Asked and</p> <p>4 answered.</p> <p>5 A. I don't know if I could assess what</p> <p>6 was in their mind on negotiating the deal and</p> <p>7 what they thought they were getting and weren't</p> <p>8 getting.</p> <p>9 Q. I'm asking you if it's possible that</p> <p>10 that's the reason that they agreed to go forward</p> <p>11 with the transaction --</p> <p>12 A. It is possible --</p> <p>13 Q. -- despite having not done the due</p> <p>14 diligence that they requested.</p> <p>15 A. It is possible that that was in their</p> <p>16 mind and they thought of that, yes.</p> <p>17 Q. Okay. In your review of the evidence</p> <p>18 in this case, did you see any indication that</p> <p>19 Barclays was arranging to post margin to the OCC</p> <p>20 or the various other clearing brokers and</p> <p>21 clearing organizations such that the margin</p> <p>22 requirements come Monday, September 22, would be</p> <p>23 satisfied in order to avoid a liquidation?</p> <p>24 A. I didn't see anything to the effect</p> <p>25 that they were preparing to do that, but I</p>	<p>1 D. McIsaac</p> <p>2 haven't reviewed all the documents that Barclays</p> <p>3 has in their possession as to the transaction.</p> <p>4 Q. If you were advising a company who was</p> <p>5 acquiring an exchange-traded derivatives</p> <p>6 portfolio, and you knew the closing was going to</p> <p>7 take place in a matter of days, would you be</p> <p>8 advising that company to start making</p> <p>9 arrangements to post the collateral if you</p> <p>10 didn't believe you were getting the collateral</p> <p>11 that had already been posted by the selling</p> <p>12 entity?</p> <p>13 A. Where would I advise them to post the</p> <p>14 collateral if they didn't buy anything as yet?</p> <p>15 I'm not sure what the question is. How would I</p> <p>16 advise them to post collateral? Post collateral</p> <p>17 where?</p> <p>18 Q. To arrange. Would you advise them to</p> <p>19 start arranging to post that collateral if you</p> <p>20 believed you weren't going to be getting the</p> <p>21 collateral that was already posted by the</p> <p>22 selling entity?</p> <p>23 A. How much time would I -- I don't think</p> <p>24 they would need a lot of time to arrange for</p> <p>25 collateral to post if they were a broker-dealer.</p>

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<p>1 D. McIsaac</p> <p>2 They had plenty of collateral that could have</p> <p>3 been posted if they needed to.</p> <p>4 Q. Are you aware of how many different</p> <p>5 clearing organizations and clearing brokers LBI</p> <p>6 traded in exchange-traded derivatives through?</p> <p>7 A. I believe they traded through the OCC,</p> <p>8 the CME in the U.S. I believe they cleared</p> <p>9 through other brokers for some of the other</p> <p>10 foreign businesses. I don't know what</p> <p>11 arrangements Barclays had with those entities</p> <p>12 already.</p> <p>13 Q. What is the typical practice of a</p> <p>14 clearing organization at the open of business on</p> <p>15 a given day if collateral is not posted</p> <p>16 sufficient to satisfy the margin requirements?</p> <p>17 MR. OXFORD: Objection. Form.</p> <p>18 A. I'm not sure what the question --</p> <p>19 could you sort of rephrase it so I understand</p> <p>20 what the question is?</p> <p>21 Q. Sure. If the OCC woke up on Monday</p> <p>22 morning and realized that there was no</p> <p>23 collateral posted in the OCC accounts that were</p> <p>24 held on behalf of LBI, what would the OCC have</p> <p>25 done?</p>	<p>1 D. McIsaac</p> <p>2 A. Well, I don't know how that could</p> <p>3 happen because I don't know how the collateral</p> <p>4 could come out. So I assume when they were</p> <p>5 taking over the positions, however they decided</p> <p>6 to move those positions into their</p> <p>7 infrastructure into their position, that they</p> <p>8 would make arrangements with the OCC to have the</p> <p>9 adequate collateral there.</p> <p>10 Sometimes you may transfer the</p> <p>11 collateral that's in the accounts already and</p> <p>12 then pay it back to the -- to the seller just as</p> <p>13 a means to do it efficiently.</p> <p>14 Q. And if you were advising an entity, a</p> <p>15 seller, to enter into that type of an</p> <p>16 arrangement, would you have something written</p> <p>17 into an agreement somewhere to provide for a</p> <p>18 true-up of that money?</p> <p>19 A. I would have something that explained</p> <p>20 what I was purchasing, and if I wasn't</p> <p>21 purchasing those assets, I might have something</p> <p>22 in there saying I'll return them or else. If</p> <p>23 I'm not paying for them, I'd be obliged to</p> <p>24 return them. I've done a deal before, we have</p> <p>25 moved those assets over and then paid them back</p>
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<p>1 D. McIsaac</p> <p>2 the next day. It was just the ease of moving it</p> <p>3 into the -- into the process of moving the</p> <p>4 exchange-traded derivatives over.</p> <p>5 Q. Would it be prudent as an advisor to a</p> <p>6 seller in that circumstance to have a</p> <p>7 documentation of the agreement that you would be</p> <p>8 getting back billions of dollars in collateral?</p> <p>9 MR. OXFORD: Objection to the form.</p> <p>10 Assumes facts not in evidence.</p> <p>11 You can answer.</p> <p>12 A. I would assume that as well as what</p> <p>13 you were purchasing would be in the agreement.</p> <p>14 Q. I'm showing you what has been marked</p> <p>15 as Exhibit 51. Oh, you already have a document</p> <p>16 that's Exhibit 51.</p> <p>17 If you look at paragraph 1(a), it says</p> <p>18 here, "For good and valuable consideration, the</p> <p>19 receipt and sufficiency of which are hereby</p> <p>20 acknowledged, Lehman hereby sells, assigns,</p> <p>21 transfers and sets over to Barclays, without</p> <p>22 recourse or without representation or warranty,</p> <p>23 all of Lehman's rights, title, interests,</p> <p>24 powers, privileges, remedies, obligations, and</p> <p>25 duties in, to, under, and in respect of the</p>	<p>1 D. McIsaac</p> <p>2 Account, as of the Effective Date including with</p> <p>3 respect to (i) the Clearing Fund deposit; (ii)</p> <p>4 all margin deposits held by OCC with respect to</p> <p>5 the account; (iii) all settlement obligations</p> <p>6 with regard to transactions in cleared accounts;</p> <p>7 and (iv) all rights and obligations in respect</p> <p>8 of exercises of options contracts and</p> <p>9 assignments of such exercises."</p> <p>10 Do you see that?</p> <p>11 A. Yes.</p> <p>12 Q. Do you agree that under this agreement</p> <p>13 the Trustee agreed -- authorized Lehman's sale</p> <p>14 of Lehman's rights in the margin deposits that</p> <p>15 were held at the OCC without recourse or</p> <p>16 representation of warranty?</p> <p>17 MR. OXFORD: I'll object to the form</p> <p>18 of the question. Calls for a legal</p> <p>19 conclusion.</p> <p>20 A. I don't think -- I'm not a lawyer, so</p> <p>21 I don't want to talk about it, but I don't think</p> <p>22 this is selling -- this is the sale agreement.</p> <p>23 This is an agreement just to transfer at the</p> <p>24 OCC, and I assume when they say hereby</p> <p>25 acknowledge for, you know, sufficiency, without</p>

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<p>1 D. McIsaac 2 recourse, representation, whatever has happened, 3 is in another agreement. This is not the 4 binding sale agreement, I don't think. 5 Q. This is a binding agreement, you 6 realize that, right? 7 MR. OXFORD: Objection to form. Calls 8 for a legal conclusion. 9 A. I think what I said is this is not a 10 sale agreement. 11 Q. Do you think that it's -- do you think 12 that the language of this provision that we just 13 looked at together suggests that Lehman was 14 going to transfer the margin deposits held by 15 the OCC to Barclays? Is that what you 16 understand this language to mean? 17 A. Yes. 18 MR. OXFORD: Objection to form. 19 Q. Do you think that -- do you think that 20 that language is clear or do you think it's 21 ambiguous in some way? 22 MR. OXFORD: Objection to form. 23 A. I think the language is clear as far 24 as the OCC goes as to what is happening with the 25 assets at the OCC.</p>	<p>1 D. McIsaac 2 Q. Okay. 3 A. It is not determining what 4 compensation was paid or how the arrangements 5 were made. All this is is between two 6 counterparties who are at the clearing org. 7 transferring their obligations from one to 8 another. 9 Q. So you assume that the sale agreement, 10 for example, that was approved by the court 11 suggests that the posted margin would be 12 transferred and then this agreement would make 13 sense to you; is that what you're saying? 14 MR. OXFORD: Objection to form. 15 Misstates the witness's testimony. 16 You can answer. 17 A. I think the sale agreement would 18 denote what was being paid for the assets, not 19 how they were being transferred. 20 Q. And this would denote how it's being 21 transferred? 22 MR. OXFORD: Objection. Form. 23 A. This would denote the authority for 24 OCC to transfer it. You have a sale agreement 25 and you may have another agreement on how you're</p>
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<p>1 D. McIsaac 2 going to effectually move moneys back and forth. 3 Usually you convert, do a conversion, and you'll 4 have some documents that talk about how you're 5 going to do that. 6 Q. But the fact that it was going to be 7 transferred, that is denoted in the TAA; is that 8 right? 9 MR. OXFORD: Objection. Form. 10 A. This is a vehicle to move the Lehman 11 option boxes at OCC into Barclays' name. 12 Q. And that would include the margin 13 deposits? 14 A. I believe it includes everything 15 that's denoted here, which is the margin 16 deposits is part of it. 17 Q. Okay. What do you understand "without 18 recourse" to mean? 19 MR. OXFORD: Objection. Form. Calls 20 for a legal conclusion. 21 You can answer. 22 A. I'm not sure what it means in this 23 case. 24 Q. What do you generally understand the 25 term "without recourse" to mean?</p>	<p>1 D. McIsaac 2 A. I would guess there's no recourse to 3 the OCC if something went wrong. 4 Q. You don't think it may mean without 5 recourse to Barclays for any of the money that 6 Lehman is transferring to Barclays? 7 MR. OXFORD: Objection. Form. Asked 8 and answered. Calls for a legal conclusion. 9 You can answer again. 10 A. As I said, I think this means recourse 11 to the OCC. 12 Q. Is it possible that it means without 13 recourse to anyone? 14 MR. OXFORD: Objection. Calls for a 15 legal conclusion. 16 A. It's a legal document. I'll let the 17 lawyers decide. 18 Q. Okay. I'd like to go back in your 19 report to page 23 again where you say that "a 20 rational seller would not include margin in the 21 deal unless it was being compensated dollar for 22 dollar," do you see that? 23 A. Could you point out what paragraph? 24 I'm sorry. 25 Q. Page 23 at the last --</p>

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<p>1 D. McIsaac 2 A. Got it. Sorry. 3 Q. You see that language? 4 A. Uh-huh. 5 Q. I'm handing you -- I'm going to mark 6 it as an exhibit -- Exhibit 688. 7 (Exhibit 688, Deposition of Bart 8 McDade, marked for identification, as of 9 this date.) 10 Q. If you could turn with me to page 275. 11 This is testimony of Bart McDade. Are you 12 familiar with that name? Do you know who he is? 13 A. I believe he might have been the 14 president at Lehman Brothers, Inc. 15 Q. Is it your understanding that he was 16 involved in the negotiations of the transaction 17 in September of 2008 between Lehman and 18 Barclays? 19 A. I believe he was, but I don't know if 20 I've ever seen anything that said what his role 21 was in it. 22 Q. Okay. On page 275, starting at line 23 3, Mr. McDade was asked: "Did you understand 24 that, in addition to the long positions and the 25 short positions that Lehman had at OCC, it also</p>	<p>1 D. McIsaac 2 had additional cash and assets that were 3 deposited as margin and also clearing funds 4 deposited at the OCC?" Do you see that 5 question? 6 A. Yes. 7 Q. Mr. McDade responds, "Yes, I did, but 8 keep in mind the context that we had had assets 9 like that, for example, at the CME and they lost 10 those assets over the course of the week. So we 11 had no confidence that those were potentially 12 our assets given what had been transpiring." 13 Do you see that? 14 A. Yes. 15 Q. What do you understand Mr. McDade to 16 be suggesting in this testimony? 17 MR. OXFORD: Objection. Form. Calls 18 for speculation. 19 A. I wouldn't want to try to guess what 20 he's thinking. 21 Q. Do you have any idea what he means 22 when he's referring to the CME losing assets 23 over the course of the week? 24 A. I'm assuming based on what we said 25 before that maybe he liquidated some of their</p>
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<p>1 D. McIsaac 2 assets. But this is a paragraph taken out of 3 this page 275, so I don't know where it is in 4 relation to what this question is referring to 5 or where the background for it is. 6 Q. You said the CME could have liquidated 7 positions. Aren't you aware that the CME in 8 fact did liquidate or auction off positions in 9 LBI's account during the week of September 15? 10 A. I said this could have been referring 11 to that. I don't know if this is referring to 12 that. I don't know what it's referring to. 13 Q. Do you know of any other actions by 14 the CME during that week that involved 15 liquidation of positions? 16 A. He doesn't say anything here about 17 liquidation of positions. He just is referring 18 to they lost assets. 19 Q. Do you know of any instance other than 20 the auction in which LBI lost assets in relation 21 to the CME account? 22 A. I don't know of any other reference 23 anywhere else of them losing assets at the CME. 24 Q. Mr. McDade says, "We had no confidence 25 that those were potentially our assets given</p>	<p>1 D. McIsaac 2 what had been transpiring," and he was saying in 3 response to a question about assets, cash and 4 assets, that were deposited as margin in its 5 clearing funds deposited at the OCC. 6 Do you understand Mr. McDade to be 7 suggesting that the assets posted at the OCC 8 were at risk? 9 MR. OXFORD: Objection. Asked and 10 answered. 11 A. Again, I don't know if I can determine 12 what Mr. McDade meant. There were a lot of 13 assets mentioned above that. I'm not sure what 14 he's referring to there. He might have been 15 referring to long positions. I don't know. 16 Q. Do you agree that Mr. McDade seemed to 17 think that there were some assets at the OCC 18 that were potentially not going to be available 19 to Lehman and that he thought the CME example 20 was evidence of that? 21 A. I don't want to speculate what he 22 meant by these words. I don't know really what 23 he meant by these words. 24 Q. Assuming Mr. McDade was referring to 25 the loss of \$1.6 billion in assets at the CME on</p>

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1 D. McIsaac
2 September 18, and assuming for purposes of this
3 question that Mr. McDade was talking about the
4 margin and clearing funds deposited at the OCC
5 when he says they had no confidence that those
6 were potentially our assets, would you consider
7 it irrational for Mr. McDade to lack that
8 confidence?
9 MR. OXFORD: Objection to form.
10 MR. GREEN: Objection.
11 A. Again, I'm not sure what his lacking
12 of confidence is. The question is did you
13 understand that, in addition to the long
14 positions and short positions that Lehman had at
15 the OCC, it also had additional cash assets that
16 were deposited as margin, so the answer is --
17 Q. And my question assumed that the
18 assets in the answer that he gave was the assets
19 that were deposited as margin and clearing funds
20 at the OCC. So assuming that that's what the
21 assets were referring to, was it irrational for
22 Mr. McDade to lack confidence that those were
23 going to be available to Lehman?
24 MR. OXFORD: Objection. Form.
25 Assumes facts not in evidence.

1 D. McIsaac
2 A. I mean, I -- I'm having a problem
3 answering the question only because I don't know
4 what he said in reference to and what the time
5 period was that this was talking -- even talking
6 about. I don't know if this is talking about
7 the sale or anything else. I'm reading one
8 paragraph.
9 It seems somehow that he's concerned
10 about that there was confidence in that
11 potential assets -- what is he saying? "So we
12 had no confidence that those were potentially
13 our assets given to what was transpiring." I
14 don't know what he means by that. Maybe he
15 thought he sold them already. I don't know.
16 Q. Okay. If you were involved in the
17 negotiations of this transaction on behalf of
18 Lehman and you had just seen the CME auction off
19 all of your proprietary positions and transfer
20 the margin that was posted at the CME to the
21 bidders who were willing to take those positions
22 over, and then the OCC started threatening to
23 liquidate your account, would you be concerned
24 that the same thing might happen?
25 MR. OXFORD: Objection. Form.

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1 D. McIsaac
2 A. I would take action if I thought they
3 were going to liquidate them for me and probably
4 direct my people to liquidate them before the
5 OCC had a chance to liquidate them. So I would
6 be at my best possible advantage.
7 Q. Let's assume you had tens of thousands
8 of positions, and if you tried to liquidate them
9 all in a matter of a day, you would lose a
10 substantial amount of money on that liquidation.
11 A. Again --
12 MR. OXFORD: Hold on. Is there a
13 question?
14 MS. BLOOMER: Yes, there is, if I
15 could finish.
16 MR. OXFORD: Sure.
17 Q. Would it be rational for you to fear
18 that the OCC might liquidate those positions
19 before you would get a chance to?
20 MR. OXFORD: Okay. Can we just make
21 sure we have that question in mind before --
22 THE WITNESS: Sorry.
23 MR. OXFORD: -- Mr. McIsaac answers?
24 A. Could you just read back the whole --
25 Q. Let's assume you had tens of thousands

1 D. McIsaac
2 of positions, and if you tried to liquid them
3 all in a matter of day, you would lose a
4 substantial amount of money on that liquidation.
5 Would it be rational for you to fear
6 that the OCC would liquidate those positions
7 before you would get a chance to?
8 MR. OXFORD: Objection. Form.
9 MR. KAY: Objection.
10 A. I don't know why you would fear that
11 they would be able to liquidate them before you
12 could liquidate them. I don't know why you
13 would have that fear. If you were afraid that
14 they were going to liquidate them, I would think
15 you would start liquidating your portfolio.
16 Q. If you thought the liquidation would
17 happen all in one day, would you be concerned
18 that that liquidation may cost you a substantial
19 amount of the margin you had posted in those
20 accounts?
21 MR. OXFORD: Objection. Form.
22 A. If I liquidated, it would cost me none
23 of the margin. It may cost me -- I may have
24 gains and losses in the liquidation, but at the
25 end of the day, if I liquidated everything, I

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<p>1 D. McIsaac 2 would have no margin requirement. 3 Q. And the margin that was posted to 4 secure those positions in the event of a 5 liquidation would be accessible to the OCC, 6 correct, to cover any losses on that 7 liquidation? 8 MR. OXFORD: Objection. Form. 9 A. I thought you asked me if I was 10 liquidating them. If I was liquidating them, 11 no, they would give me back my margin. 12 Q. They would give you back your margin 13 after you had liquidated the positions and 14 settled any costs associated with that 15 liquidation, right? 16 A. Correct, any costs associated with the 17 OCC on the liquidation. 18 Q. Would they give you back your margin 19 before the positions were closed out and before 20 they had gotten protected themselves? 21 A. No, that's why I would be liquidating 22 them so that I could close out my account with 23 the OCC. 24 Q. Okay. And is there a risk that you 25 liquidated those positions and the cost of</p>	<p>1 D. McIsaac 2 liquidating the positions exceeds the margin 3 that you had posted to secure those positions? 4 MR. OXFORD: Objection. Asked and 5 answered. 6 A. I believe somebody would assess that 7 risk and determine what to do, and if they 8 thought the cost was going to exceed it, then if 9 it was liquidated, wouldn't they come back and 10 charge me for it anyway? 11 Q. How long would it take you to 12 liquidate tens of thousands of positions, do you 13 think? A day? 14 MR. OXFORD: Objection to form. 15 A. I have no idea. 16 Q. You have no idea? 17 A. I have no idea. 18 Q. Do you think it's likely that you 19 could liquidate tens of thousands of positions, 20 equities options positions in a day, without 21 substantially moving the market? 22 MR. OXFORD: Objection. Form. Asked 23 and answered. Assumes facts not evidence. 24 You can answer. 25 A. I don't know what the difference is if</p>
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<p>1 D. McIsaac 2 you move the market whether or not you could 3 liquidate them. 4 Q. Do you understand that there could be 5 a difference in the cost of liquidating them if 6 the market price changes throughout the course 7 of the day that you're conducting your 8 liquidation? 9 A. Yes. But what does that have to do 10 with me, my ability to liquidate them? You 11 asked me could I liquidate them? I said yes. 12 Q. And the cost of liquidating them would 13 be dependent upon the impact that the sales 14 would have on the market price of what you're 15 liquidating, isn't that right? 16 A. Yes. 17 Q. CME liquidated the positions when it 18 liquidated the proprietary account on September 19 18th in a single day. 20 Do you have any reason to think that 21 the OCC would not have taken the same approach? 22 MR. OXFORD: Objection. Form. 23 A. I'm not -- I don't understand what the 24 question is. We started out my saying that the 25 firm should liquidate. Now you're asking me</p>	<p>1 D. McIsaac 2 would the OCC liquidate. 3 Q. That's right. I'm asking you a 4 different question now. 5 A. Okay. 6 Q. Which is: If the OCC were to 7 liquidate, do you have any reason to think that 8 they wouldn't have conducted that liquidation in 9 the same manner in which the CME did? 10 MR. OXFORD: Same objection. 11 A. I don't know their procedures for 12 liquidating accounts. I would assume it could 13 be similar to the CME, but in light of the CME 14 doing that, if I was Lehman, I would take -- I 15 would be proactive and do my own liquidation 16 before they liquidated me and I could lose \$1.6 17 billion. 18 Q. If you thought you couldn't avoid the 19 loss of \$1.6 billion either way, might you just 20 decide to transfer the accounts to an acquirer 21 instead of liquidating them yourself? 22 MR. OXFORD: Objection. Asked and 23 answered. Assumes facts not in evidence. 24 A. Again, I think I've said I would 25 assess the risk of doing the business, but if I</p>

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<p>1 D. McIsaac 2 was negotiating transferring the margin, that 3 would be a part to start my negotiating. If 4 they were liquidated, that would be the amount; 5 I would negotiate from there. 6 Q. And if you assume that the liquidation 7 would cost you all of the margin, would it be 8 rational to agree to transfer the accounts and 9 transfer the margin with the accounts? 10 A. For what reason? Why would I have to 11 do that? What benefit do I get by doing that? 12 Q. Do you preserve customer positions by 13 doing that? 14 A. Are we talking about customer 15 positions or proprietary? I'm not sure what 16 we're talking about here. I thought we were 17 talking proprietary positions. That's what the 18 CME -- 19 Q. Would it preserve customer positions 20 by doing that? Let's talk about the customer 21 account. If you moved -- if you knew that you 22 were going to lose the posted margin in a 23 liquidation either way, would it be rational to 24 transfer that margin to an acquirer in order to 25 preserve the customer positions for the benefit</p>	<p>1 D. McIsaac 2 of those customers? 3 MR. OXFORD: Objection. Asked and 4 answered. Assumes facts not in evidence. 5 You can answer. 6 A. I would assume you would take all that 7 into account. The main thing I would look at is 8 that the CME liquidated the proprietary 9 positions and not the customer positions. 10 There is some, I guess some goal in 11 preserving the customer positions even from the 12 clearing orgs., so I would assume Lehman would 13 talk to the OCC and said if we liquidated all of 14 our proprietary positions, maybe they would not 15 liquidate the customer positions. That would be 16 something you would negotiate when that is 17 happening. You would discuss it when that is 18 happening. 19 Q. Assuming the parties didn't agree to 20 just transfer all of the accounts with all of 21 the margin to Barclays? 22 A. I would think you would look at all 23 your options before you decided on doing 24 something. 25 Q. Okay. And how long does it take to</p>
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<p>1 D. McIsaac 2 analyze all of your options in the circumstances 3 that we're talking about here? 4 MR. OXFORD: Objection. Form. 5 MR. GREEN: Same objection. 6 A. I don't know how long they had to 7 prepare for these options and how long -- how 8 long it would take to call the OCC and ask them 9 the question. I'm sure you could ask them the 10 question and go from there and see what they 11 said. 12 Q. And what question would you propose 13 asking the OCC? 14 A. Well, you're -- you seem to be 15 concerned about them liquidating the account. I 16 would talk to the OCC and say, "The CME just 17 liquidated my accounts. What are your plans?" 18 Q. And -- 19 A. Or I'm sure maybe they were having 20 discussions with the OCC at the time. 21 Q. Didn't we look at an e-mail earlier 22 that showed that -- that had the discussion with 23 the OCC and the OCC told Lehman and the Trustee 24 that it was going to liquidate their accounts? 25 A. That was after the 19th.</p>	<p>1 D. McIsaac 2 Q. Okay. 3 A. The sale agreement was the 16th. 4 Q. Let's assume the threats to liquidate 5 started on the 15th. Does that change your 6 opinion? 7 MR. OXFORD: Object to the form. It 8 assumes facts not in evidence. 9 You can answer if you're able. 10 A. I don't know what happened at the time 11 and I don't know -- we're assuming if the OCC 12 came in on the 15th and said unless you 13 liquidated, if that was the case, then why on 14 the 20th were they threatening to liquidate it 15 if they already threatened to liquidate it and 16 didn't do it? I'm not sure -- 17 Q. I understand, but I want you to 18 understand that I'm trying to ask you questions 19 because you are providing an expert opinion 20 about what would have been rational under these 21 circumstances, and I'm probing that by 22 describing to you the circumstances that may or 23 may not affect your opinion. 24 So I would like you to answer my 25 questions as opposed to posing questions each</p>

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<p>1 D. McIsaac 2 time. 3 A. Sorry about that. 4 Q. That's okay. 5 A. I -- would it be rational? It would 6 be rational to do many things. It might be 7 rational to transfer the margin. It might be 8 rational to liquidate your accounts. It may be 9 rational to find another buyer. There's a lot 10 of rational things that could be done at that 11 point in time. 12 Q. And is it fair to say that you can't 13 really say what would be truly rational if you 14 didn't understand the circumstances? 15 MR. OXFORD: Objection. Form. 16 A. I can say that based -- and I was not 17 there, I don't know what was negotiated and what 18 was discussed. I think what I laid out was 19 rational things you could do. 20 Q. How can you say that it wouldn't have 21 been rational for the Trustee to make a decision 22 under the specific circumstances that it was 23 facing at the time if you don't know the 24 specific circumstances that the Trustee was 25 facing at the time?</p>	<p>1 D. McIsaac 2 MR. OXFORD: Objection. Form. 3 A. We talked about the 15th is what I 4 asked the question -- answered a question on, 5 and the Trustee wasn't involved then. So I'm 6 not sure, this question now, what's the basis of 7 it. I'm sorry. 8 Q. Right. Each question I ask is a new 9 question, so I would appreciate it if you would 10 not assume for every question I ask that I'm 11 building on a prior question. 12 A. No. No. That's why I'm asking what's 13 the basis for this question, because I don't 14 know. 15 Q. I'm asking you how you can give an 16 expert opinion about what it would have been 17 rational for the Trustee to do under a specific 18 set of facts when you don't know the 19 circumstances that the Trustee was facing at the 20 time? 21 MR. OXFORD: Objection. Form. 22 Misstates -- misstates the witness's 23 testimony. 24 But you can answer. 25 A. I don't know what went through the</p>
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<p>1 D. McIsaac 2 Trustee's mind and what his determination was 3 and what he believed to be a rational approach 4 at that time. What I've given an opinion on is 5 what I think a rational seller would do in my 6 opinion at that point in time, how they would 7 react to what was going on. 8 Q. Doesn't that opinion require you to 9 know what was going on at that time? 10 MR. OXFORD: Objection. Form. 11 A. I believe I've stated that a rational 12 seller would negotiate the sale of the margin 13 assets. No matter what was going on at the time 14 you would do that negotiation. 15 Q. Is it fair to say that it is not your 16 opinion that a rational seller would have 17 required dollar-for-dollar compensation for 18 every dollar's worth of margin that it agreed to 19 transfer in this situation facing this Trustee 20 in September of 2008, or -- 21 MR. OXFORD: Objection. 22 Q. -- is it not your opinion? 23 MR. OXFORD: Objection. Form. Asked 24 and answered. 25 You can answer it again.</p>	<p>1 D. McIsaac 2 A. My opinion is a rational seller would 3 look for dollar for dollar, they would negotiate 4 from there, and at this point in time if there 5 were things that needed to be adjusted, people 6 negotiating the sale and the purchase would come 7 to an agreement on what was being sold and what 8 was being purchased. 9 Q. Okay. So when you say in your report 10 a rational seller would not include margin in 11 the deal unless it was being compensated dollar 12 for dollar, do you mean what you say in that 13 sentence or are you modifying it here today? 14 MR. OXFORD: Objection. Form. Asked 15 and answered. 16 You can answer it again. 17 A. You are giving me facts that were not 18 part of my opinion. What I said in my opinion 19 was a rational purchaser would want to quantify 20 the risk to determine what additional assets it 21 needed, and a rational seller would include 22 margin on dollar-for-dollar basis. 23 As you negotiate that, you may change 24 your mind. You may decide I'll take 50 cents on 25 the dollar, I may take 25 cents on the dollar, I</p>

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<p>1 D. McIsaac</p> <p>2 may want a dollar and a half on a dollar because</p> <p>3 I think the assets are worth more. That's a</p> <p>4 negotiation that would occur at that time.</p> <p>5 Q. You might want zero --</p> <p>6 A. But the starting fact would be I would</p> <p>7 want dollar for dollar and I would negotiate</p> <p>8 from there. I would assume I would not give</p> <p>9 away assets for nothing.</p> <p>10 Q. Would you agree that there could be</p> <p>11 circumstances in which it was rational to agree</p> <p>12 to transfer the accounts in exchange for the</p> <p>13 margin that was posted to secure those accounts?</p> <p>14 MR. OXFORD: Objection. Form.</p> <p>15 A. I would agree that the seller could</p> <p>16 make a rational decision to transfer the</p> <p>17 accounts with no compensation, if that's what</p> <p>18 they wanted, based on facts and circumstances at</p> <p>19 that point in time if that's what they</p> <p>20 negotiated, but I would anticipate that that</p> <p>21 would be somehow brought into -- into the</p> <p>22 contract that that was being done and probably</p> <p>23 brought in front of the judge if he was selling</p> <p>24 assets above and beyond what was in the</p> <p>25 Clarification Letter.</p>	<p>1 D. McIsaac</p> <p>2 Q. Okay.</p> <p>3 MR. OXFORD: Trish, that's about</p> <p>4 another hour. I don't know if this is a</p> <p>5 good time to take five minutes.</p> <p>6 MS. BLOOMER: Yes, it's fine.</p> <p>7 THE VIDEOGRAPHER: The time is 3:03.</p> <p>8 This is the end of the tape labeled number</p> <p>9 4. We're going off the record.</p> <p>10 (Recess.)</p> <p>11 THE VIDEOGRAPHER: This is the start</p> <p>12 of the tape labeled number 5. The time is</p> <p>13 3:19. We're back on the record.</p> <p>14 BY MS. BLOOMER:</p> <p>15 Q. Good afternoon again.</p> <p>16 A. Good afternoon.</p> <p>17 Q. Would you consider assets that were</p> <p>18 posted as margin at a clearing organization with</p> <p>19 respect to an exchange-traded derivatives</p> <p>20 account to be an asset that's used in the</p> <p>21 business of the exchange-traded derivatives?</p> <p>22 MR. OXFORD: Objection. Form.</p> <p>23 A. It would be an asset that at that</p> <p>24 point in time was being used to secure the</p> <p>25 obligations. Assets used in the business may</p>
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<p>1 D. McIsaac</p> <p>2 have a lot of different terms.</p> <p>3 Q. Do you agree that posted margin is</p> <p>4 associated with the exchange-traded derivatives</p> <p>5 business that it secures?</p> <p>6 A. It's associated with the</p> <p>7 exchange-traded derivatives that it's securing.</p> <p>8 I don't know what business it would be part of.</p> <p>9 Q. Can you operate an exchange-traded</p> <p>10 derivatives business without posting margin to</p> <p>11 satisfy the requirements of a clearing</p> <p>12 organization?</p> <p>13 A. I don't believe so.</p> <p>14 Q. I'm showing you Exhibit 1, which is</p> <p>15 the Asset Purchase Agreement. If you could turn</p> <p>16 to page 2 at the bottom, meaning the number on</p> <p>17 the bottom. The term "business" is defined, do</p> <p>18 you see that? It's the second full definition</p> <p>19 on page 2.</p> <p>20 A. You're saying -- oh, I'm sorry.</p> <p>21 Business, yes, I'm sorry. I was looking at the</p> <p>22 bottom, actually.</p> <p>23 Yes.</p> <p>24 Q. Would exchange-traded derivatives in</p> <p>25 your experience fall under any of the categories</p>	<p>1 D. McIsaac</p> <p>2 of LBI's businesses that are described in this</p> <p>3 definition?</p> <p>4 MR. OXFORD: Objection. Form.</p> <p>5 A. The concept of exchange-traded</p> <p>6 derivatives -- there are different parts of the</p> <p>7 business. You have futures that are clearing</p> <p>8 and execution business. You have equity options</p> <p>9 that are just -- that are transpiring for</p> <p>10 customers that are just part of the customer</p> <p>11 business as well as selling bonds, you know,</p> <p>12 stocks and bonds, and then you have trading of</p> <p>13 exchange-traded derivatives that could be part</p> <p>14 of a portfolio of assets or you could possibly</p> <p>15 just be trading them by themselves.</p> <p>16 Q. Okay. And one of the businesses</p> <p>17 that's listed here of the seller that are</p> <p>18 encompassed within the term "business" is the</p> <p>19 trading and advisory businesses. Do you see</p> <p>20 that?</p> <p>21 A. Uh-huh. I see fixed income and</p> <p>22 equities cash trading.</p> <p>23 Q. And then in the next line do you see</p> <p>24 trading and advisory businesses?</p> <p>25 A. Yes.</p>

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<p>1 D. McIsaac</p> <p>2 Q. Would exchange-traded derivatives that</p> <p>3 were proprietary to LBI be considered part of</p> <p>4 the trading business of LBI?</p> <p>5 A. I'm a little confused why trading</p> <p>6 would be used in two places. I'm not sure</p> <p>7 what -- what the differentiation is between the</p> <p>8 two of them. Fixed income and equities cash</p> <p>9 trading and trading and advisory business, I</p> <p>10 just don't know why it would be referenced</p> <p>11 twice.</p> <p>12 Q. Is it your understanding that the</p> <p>13 exchange-traded derivatives were a portion of</p> <p>14 the trading business that Barclays acquired?</p> <p>15 MR. OXFORD: Objection. Form.</p> <p>16 A. The proprietary part of it would have</p> <p>17 been part of the exchange -- the trading</p> <p>18 businesses that they acquired.</p> <p>19 Q. And would you agree that the customer</p> <p>20 futures business that Barclays acquired from</p> <p>21 Lehman was -- I'm sorry. Would you agree that</p> <p>22 the customer futures business that LBI conducted</p> <p>23 prior to September 22, 2008 would fall within</p> <p>24 the definition of LBI's business as a futures</p> <p>25 commission merchant?</p>	<p>1 D. McIsaac</p> <p>2 A. Yes.</p> <p>3 Q. Okay. If you turn to page 4 -- I'm</p> <p>4 sorry, page 10. I'm sorry, 6.</p> <p>5 If you turn to page 6 of the Asset</p> <p>6 Purchase Agreement, do you see the definition of</p> <p>7 "purchased assets" that begins around the middle</p> <p>8 of that page?</p> <p>9 A. Uh-huh.</p> <p>10 Q. It says, "Purchased Assets means all</p> <p>11 of the assets of seller and its subsidiaries</p> <p>12 used in connection with the business, excluding</p> <p>13 the excluded assets," and then the word</p> <p>14 "including," do you see that?</p> <p>15 A. Yes.</p> <p>16 Q. And the term "business" that's</p> <p>17 capitalized there, do you understand that to be</p> <p>18 referring to the business definition that we</p> <p>19 just looked at on the prior page?</p> <p>20 A. I believe so.</p> <p>21 Q. Okay. If you look at page 10, there's</p> <p>22 a word "including" that's defined. Do you see</p> <p>23 that?</p> <p>24 A. Yes.</p> <p>25 Q. And do you see that it says, "The word</p>
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<p>1 D. McIsaac</p> <p>2 'including' or any variation thereof means</p> <p>3 including, without limitation, and shall not be</p> <p>4 construed to limit any general statement that it</p> <p>5 follows to the specific or similar terms or</p> <p>6 matters immediately following it."</p> <p>7 A. Yes.</p> <p>8 Q. Turning back to page 6, the definition</p> <p>9 of "purchased assets," given the definition we</p> <p>10 just looked at of the term "including," is it</p> <p>11 fair to say that the "purchased assets"</p> <p>12 definition is not limited by the subparagraphs</p> <p>13 that follow the word "including"?</p> <p>14 MR. OXFORD: Objection. Form. Calls</p> <p>15 for a legal conclusion.</p> <p>16 A. Yeah, I'm not a lawyer, so this is --</p> <p>17 I'm not sure what it means and if you had before</p> <p>18 businesses, why you needed additional, but I</p> <p>19 don't know. I'm not -- I don't want to -- I</p> <p>20 don't want to give an opinion on a legal</p> <p>21 document.</p> <p>22 Q. Okay. You understand what the term</p> <p>23 "including without limitation" means?</p> <p>24 A. I believe so.</p> <p>25 Q. What does that mean?</p>	<p>1 D. McIsaac</p> <p>2 A. It means including without limitation.</p> <p>3 Q. And you understand what that means,</p> <p>4 the common usage of that term means?</p> <p>5 A. I -- "including without limitation"</p> <p>6 means including, we're not limiting it to what</p> <p>7 it means, what follows it.</p> <p>8 Q. Okay. Thank you. Is it your opinion</p> <p>9 that the margin that was posted in LBI's</p> <p>10 accounts at the OCC were not assets of LBI used</p> <p>11 in connection with the business, as that term is</p> <p>12 defined in this agreement?</p> <p>13 MR. OXFORD: Objection. Form.</p> <p>14 Misstates the document. Calls for a legal</p> <p>15 conclusion.</p> <p>16 You can answer.</p> <p>17 A. Could you re-read that question?</p> <p>18 Q. Is it your opinion that the margin</p> <p>19 that was posted in LBI's accounts at the OCC</p> <p>20 were not assets of LBI used in connection with</p> <p>21 the business as that term is defined in this</p> <p>22 agreement?</p> <p>23 MR. OXFORD: Objection. Form. Again,</p> <p>24 misstates the document. Calls for a legal</p> <p>25 conclusion.</p>

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<p>1 D. McIsaac</p> <p>2 A. There was a negative in there and I'm</p> <p>3 not sure -- I mean, I don't know what that term</p> <p>4 means in a legal document.</p> <p>5 Q. Are the assets posted as margin at the</p> <p>6 OCC assets of LBI?</p> <p>7 A. They may or may not be assets of LBI.</p> <p>8 Q. Do you know in the context of the</p> <p>9 assets at the OCC as of September 19, 2008</p> <p>10 whether they were assets of LBI or assets of</p> <p>11 someone else?</p> <p>12 A. The assets posted there could have</p> <p>13 been derived from many factions. If they put</p> <p>14 Treasury bills up, it could have been Treasury</p> <p>15 bills owned by LBI. It could have been Treasury</p> <p>16 bills that were accepted as collateral against a</p> <p>17 receivable for a reverse repo or a stock borrow.</p> <p>18 It could be customers or non-customers assets.</p> <p>19 Q. Do you understand the Trustee's</p> <p>20 position in this case to be the assets at the</p> <p>21 OCC were not LBI proprietary assets?</p> <p>22 A. I don't know if I have seen that -- I</p> <p>23 don't recall seeing that specific phrase, that</p> <p>24 they were not proprietary assets.</p> <p>25 Q. You reviewed this agreement when you</p>	<p>1 D. McIsaac</p> <p>2 provided your opinion; is that right?</p> <p>3 A. Yes. Uh-huh.</p> <p>4 Q. And is it your opinion that this</p> <p>5 agreement does not encompass the margin assets</p> <p>6 that were posted at the OCC?</p> <p>7 A. I don't believe I've seen anything in</p> <p>8 here that references margin assets, and it</p> <p>9 appeared to be a very substantial asset class.</p> <p>10 I would have thought they would have been broken</p> <p>11 out in the agreement as to what was happening</p> <p>12 with the assets that were posted at various</p> <p>13 exchanges.</p> <p>14 Q. You said earlier when we looked at the</p> <p>15 Transfer and Assumption Agreement that you would</p> <p>16 have assumed that the purchase agreement would</p> <p>17 document the agreement to transfer margin to</p> <p>18 Barclays if that were the parties' agreement,</p> <p>19 correct?</p> <p>20 A. Right.</p> <p>21 Q. Do you think this purchase agreement</p> <p>22 accomplishes that when it says "all assets of</p> <p>23 seller used in connection with the business,</p> <p>24 excluding the excluded assets, are purchased</p> <p>25 assets"?</p>
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<p>1 D. McIsaac</p> <p>2 MR. OXFORD: Objection. Form. Asked</p> <p>3 and answered. You can answer.</p> <p>4 A. At points in time you may use assets</p> <p>5 to secure your obligations. I don't know if</p> <p>6 they would be considered assets of the business.</p> <p>7 If they were \$700 million today and \$200 million</p> <p>8 tomorrow, what would they be? So I would think</p> <p>9 if you were trying to transfer or somehow</p> <p>10 include those margin assets, you would define</p> <p>11 them and what the value was because that value</p> <p>12 could have changed drastically from day one to</p> <p>13 whenever you're consummating the deal. As you</p> <p>14 saw, the margin requirements go significantly up</p> <p>15 and then down.</p> <p>16 Q. Is it your understanding that the</p> <p>17 parties agreed that they would include specific</p> <p>18 references to every asset that Barclays was to</p> <p>19 acquire in this transaction?</p> <p>20 MR. OXFORD: Objection. Form.</p> <p>21 A. I don't know if they did or not. I</p> <p>22 would think significant assets such as margin</p> <p>23 would be noted and what was happening with it.</p> <p>24 Q. The agreement says that all of the</p> <p>25 assets used in connection with the business are</p>	<p>1 D. McIsaac</p> <p>2 purchased assets, excluding the excluded assets.</p> <p>3 Would you expect that since margin was</p> <p>4 such a significant asset, as you say, that it</p> <p>5 would have, therefore, had to have been -- that</p> <p>6 it would, therefore, have been logical to</p> <p>7 reference it in the excluded assets section if</p> <p>8 indeed the parties intended to exclude it?</p> <p>9 MR. OXFORD: Objection. Form.</p> <p>10 A. I don't know if you -- I would always</p> <p>11 include what you're buying, not necessarily</p> <p>12 exclude what you're not buying. I think to make</p> <p>13 something really understandable, you would say</p> <p>14 include this, include that.</p> <p>15 Like I said, the margin at the point</p> <p>16 in time when this was done might have been a</p> <p>17 billion dollars. On the 19th, it might have</p> <p>18 been \$100 million. I think you would define</p> <p>19 that at the time you were agreeing to the</p> <p>20 contract so that you made sure both parties came</p> <p>21 to what their -- with what they agreed to.</p> <p>22 So if it was on the 15th or something,</p> <p>23 it was one item, one balance, later on it's a</p> <p>24 different balance. I don't think an asset like</p> <p>25 that would be included without some kind of</p>

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<p>1 D. McIsaac 2 reference. 3 Q. So you would assume the parties to a 4 transaction would specifically identify the 5 included assets as opposed to saying we're 6 getting everything except the excluded assets; 7 is that your testimony? 8 A. I would expect if it's an asset like 9 margin, that would go up and down in value on a 10 daily basis. If you were negotiating to buy 11 that asset, you would want to put into the 12 contract what the value of that asset is, what 13 that asset is that you're receiving. 14 Open-ended margin could be, again, it 15 could have been a dollar. Would they have 16 accepted it if it was only a dollar? I don't 17 know. So I think for any ambiguity, you would 18 include the assets and you would either state at 19 the time of the transaction or put a dollar 20 amount at that point in time so that if they 21 were used at one point in time, they weren't 22 sold out, you know, five days later. 23 Q. If you were advising LBI on this deal, 24 and you saw that the agreement was structured so 25 that all of the assets were purchased assets</p>	<p>1 D. McIsaac 2 except what was excluded, would you advise them 3 that to avoid ambiguity they should reference 4 margin in the excluded assets section? 5 MR. OXFORD: Objection to form. 6 A. I would probably advise the seller -- 7 the buyer to make sure that they put in all the 8 assets that they wanted to make sure they got in 9 the agreement, not -- 10 Q. I'm not asking you what you would do 11 for the buyer. I'm asking you if you were 12 advising the seller and their agreement stated 13 "purchased assets means all of the assets of 14 seller used in connection with the business, 15 excluding the excluded assets, would you advise 16 him that it was prudent to reference margin as 17 an excluded asset given how substantial the 18 value was. 19 A. I would advise them to reference it 20 either as excluded or included. 21 Q. Included if it was included and 22 excluded if it was excluded? 23 A. Right. 24 Q. Okay. Is it your understanding that 25 Barclays knew on September 16, 2008 what the</p>
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<p>1 D. McIsaac 2 margin was worth at the OCC and at the other 3 clearing organizations to which LBI traded in 4 exchange-traded derivatives? 5 A. I believe I've seen some e-mail 6 traffic that noted that the legal counsel for 7 Barclays had been discussing margin requirements 8 of various exchanges. I think Mr. Leitner 9 pointed out that Barclays was monitoring their 10 exposure by knowing what the margin values were. 11 So I assume they knew something that was going 12 on at the exchanges. 13 Q. Is it your opinion that you would have 14 advised the acquirer to reference margin 15 specifically because it was so substantial in 16 value assumes that Barclays knew on September 16 17 what the value of the margin was; is that 18 correct? 19 A. I would think they would know what 20 assets they were buying. 21 Q. And does your opinion assume that they 22 knew what assets, what the value of the margin 23 was that they were buying on April -- on 24 September 16, 2008 when they entered into this 25 Asset Purchase Agreement?</p>	<p>1 D. McIsaac 2 MR. OXFORD: Objection. Form. 3 A. I would have to assume somebody 4 purchasing assets would know the value of the 5 assets they were purchasing, if not what they 6 thought the value was, at least what the value 7 was on the seller's records. 8 Q. I'm not trying to be argumentative. 9 You've given an opinion in your report, and we 10 can look at the opinion if you don't recall it. 11 You've given an opinion in your report 12 that, given how much this margin was worth, you 13 would have expected the acquirer to reference it 14 specifically as a purchased asset -- 15 A. Yes. 16 Q. -- if indeed they thought it was being 17 purchased. 18 I'm asking you whether that opinion 19 assumes that Barclays knew on September 16, 2008 20 what the value of the margin was that LBI held 21 or that LBI had posted to secure the 22 exchange-traded derivatives? 23 A. Again, I would assume they knew the 24 value of what they were purchasing. So I -- 25 Q. Does your opinion --</p>

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<p>1 D. McIsaac</p> <p>2 A. My opinion assumes that they would</p> <p>3 know the value they were purchasing. I would</p> <p>4 assume most people wouldn't buy something that</p> <p>5 they didn't know what they were buying.</p> <p>6 Q. Would you assume that most people</p> <p>7 wouldn't buy an entire broker-dealer business</p> <p>8 based on 48 hours of negotiations as well?</p> <p>9 MR. OXFORD: Objection. Form.</p> <p>10 Assumes facts not in evidence.</p> <p>11 A. From what I understand, Bank of</p> <p>12 America bought Lehman, more than just the</p> <p>13 brokerage business, over a weekend. So I think</p> <p>14 you can buy anything you want in any time period</p> <p>15 you want. I don't know how much due diligence</p> <p>16 was done in July, in August, in June.</p> <p>17 People have an understanding of the</p> <p>18 various competitors and what they do and how</p> <p>19 they manage it. There are reports out there.</p> <p>20 There's information out there. So I don't know</p> <p>21 what Barclays knew when they negotiated the</p> <p>22 deal.</p> <p>23 I don't know how much time they took</p> <p>24 to write this versus how much time it took to</p> <p>25 determine what they were buying.</p>	<p>1 D. McIsaac</p> <p>2 Q. And again, you think it's possible</p> <p>3 that they executed this agreement before they</p> <p>4 knew what they were buying?</p> <p>5 MR. OXFORD: Objection. Form.</p> <p>6 Misstates the witness's testimony.</p> <p>7 You can answer.</p> <p>8 A. I believe I said I assume when they</p> <p>9 execute an agreement they knew what they were</p> <p>10 buying.</p> <p>11 Q. Is that assumption based on any</p> <p>12 preliminary assumptions about how much time</p> <p>13 Barclays had to do the due diligence prior to</p> <p>14 the time it entered into this transaction?</p> <p>15 A. I can't fathom why anybody would buy</p> <p>16 anything without knowing what they were buying.</p> <p>17 So if they took 48 hours and thought that was</p> <p>18 enough to assess what they were buying and put a</p> <p>19 value on it, then that's what they did.</p> <p>20 I don't know -- I can't be in Barclays</p> <p>21 shoes to figure out what was in their mind when</p> <p>22 they bought this. Evidently, they thought they</p> <p>23 were getting valuable assets. How much they</p> <p>24 were getting and what they were willing to pay</p> <p>25 for it they had to make an assessment, and I</p>
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<p>1 D. McIsaac</p> <p>2 assume they took whatever time it needed to take</p> <p>3 to do that assessment.</p> <p>4 And I'm assuming that this transaction</p> <p>5 had to be approved by the board of directors.</p> <p>6 They had to provide some information to their</p> <p>7 board of directors on a purchase of this size.</p> <p>8 I don't think they went to</p> <p>9 the board -- would have gone to the board of</p> <p>10 directors and said we're going to buy this, but</p> <p>11 we don't know what we're buying. So I would</p> <p>12 think they would have had a clear understanding</p> <p>13 of what they were buying.</p> <p>14 Q. Might they have had a clear</p> <p>15 understanding of what they were buying but not</p> <p>16 necessarily a clear understanding of what all of</p> <p>17 those assets were worth?</p> <p>18 A. Then what were they buying if they</p> <p>19 didn't know what they were buying, what the</p> <p>20 worth -- how could you put a price on something</p> <p>21 unless you assessed it?</p> <p>22 Q. I would appreciate it if you would</p> <p>23 answer my question.</p> <p>24 A. I'm sorry. I'm asking you, I don't</p> <p>25 believe a purchaser would enter into an</p>	<p>1 D. McIsaac</p> <p>2 agreement to purchase something without</p> <p>3 assessing what the value is that they were</p> <p>4 purchasing.</p> <p>5 Q. Okay. If you could take the Sale</p> <p>6 Order transcript that we had looked at earlier,</p> <p>7 it's Exhibit 442, and if you could turn to</p> <p>8 page -- if you could turn to page 60.</p> <p>9 At the bottom of page 60, the hearing</p> <p>10 transcript reads: "We cannot take the risk of</p> <p>11 rejecting this transaction because of</p> <p>12 ambiguities, the lack of a piece of paper to</p> <p>13 support every element of the assets to be</p> <p>14 transferred, the lack of a definition as to</p> <p>15 particular items."</p> <p>16 Do you see that?</p> <p>17 A. Yes.</p> <p>18 Q. Is it possible that in this</p> <p>19 circumstance the parties agreed, due to the</p> <p>20 extraordinary circumstances at the time, to</p> <p>21 structure a deal in a way that they wouldn't</p> <p>22 structure under normal circumstances?</p> <p>23 MR. OXFORD: Objection. Form.</p> <p>24 A. I believe that they might structure a</p> <p>25 deal differently than they would under different</p>

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<p>1 D. McIsaac 2 circumstances, yes. 3 Q. And is it your understanding that the 4 circumstances that existed in 2000 -- in 5 September of 2008 made it such that the parties 6 in fact conducted their negotiations and 7 structured this transaction in a manner 8 differently than they would have under normal 9 market situations, circumstances? 10 MR. OXFORD: Objection. Asked and 11 answered. 12 A. I believe I answered that saying yes, 13 I believe this was a different time and they 14 negotiated this differently than they would have 15 at other times. 16 Q. Is it possible that Lehman was willing 17 to offer terms to Barclays that a typical seller 18 wouldn't necessarily offer because of the 19 exigencies that made this transaction important 20 to Lehman? 21 MR. OXFORD: Objection. Form. 22 A. I'm not sure how -- why a firm would 23 do certain things at times. It couldn't make 24 agreements that it normally wouldn't make. I'm 25 not sure what was in Lehman's mind or Barclays'</p>	<p>1 D. McIsaac 2 mind at the time of selling this and what 3 decisions they thought they were doing and for 4 what reasons. 5 Q. I'm showing you a document marked as 6 Exhibit 689. 7 (Exhibit 689, Deposition of James 8 Kobak, marked for identification, as of this 9 date.) 10 Q. This is deposition testimony that was 11 provided on behalf of the Trustee by Mr. Kobak. 12 Are you familiar with this deposition 13 testimony? 14 A. I don't know if I've read it and 15 relied upon it. I know Mr. Kobak made 16 declarations and depositions. I don't know if 17 this was something that was in my reliance 18 materials, but I know he made the depositions. 19 Q. Okay. So you haven't necessarily -- 20 do you remember reading this deposition 21 transcript? 22 A. I don't remember, but I might have 23 read it. I don't remember. I read a few of 24 them and -- I don't know if I read this one. I 25 think I might have. I'm not sure if it was this</p>
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<p>1 D. McIsaac 2 or the declaration. 3 Q. Fast forwarding to the time that the 4 SIPC Trustee was introduced into this matter on 5 Friday, September 19, you said that you don't 6 know what was in the minds of the parties at the 7 time that they were considering this 8 transaction; is that right? 9 A. Uh-huh. 10 Q. If you could turn to page 282 of Mr. 11 Kobak's deposition testimony, starting on line 12 14, the question says, and this is, for context, 13 talking about a Collateral Agreement that the 14 Trustee signed on Friday, September 19, either 15 at or shortly after the sale hearing: 16 It says, "LBI has assigned to Barclays 17 all rights and securities, cash, and other 18 property defined as collateral pledged by LBI to 19 the Options Clearing Corporation and held for 20 OCC's benefit at JPMorgan Chase. Did you see 21 that?" The answer is, "Yes." 22 The next question: "And was it your 23 understanding that that's what the Trustee was 24 authorizing when you signed this?" And the 25 answer is, "Yes, consistent with the overall</p>	<p>1 D. McIsaac 2 deal that there be no cash excess that would go 3 to Barclays, because that would be inconsistent 4 with the no cash and that this wouldn't make the 5 deal so rich that it would be way beyond the 6 parameters that we discussed earlier." 7 Do you see that testimony? 8 A. Yes. 9 Q. Okay. The next question says: "Did 10 you tell anyone this? When you say you signed 11 this consistent with the idea that there would 12 be no cash, this says cash. This says cash will 13 be transferred to Barclays." And the answer, 14 "Yeah, but cash would be transferred against the 15 liabilities. What I'm saying is nobody told us 16 there might be in excess of a billion dollars of 17 cash or something like that that would end up at 18 Barclays when the deal was no cash and when 19 there was an economic parameter to the deal." 20 Question: "So to the extent the cash 21 was simply needed to cover the liabilities, you 22 thought it was possible to be included in the 23 deal; is that correct?" 24 Answer: "Yes." 25 Do you recall having ever seen this</p>

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<p>1 D. McIsaac 2 testimony before? 3 A. I don't recall, but I might have seen 4 it, yes. I don't recall right now, but it seems 5 something I might have heard or seen. 6 Q. Would you agree that this testimony is 7 speaking to the understanding that the Trustee 8 and Mr. Kobak had at the time on September 19, 9 2008? 10 MR. OXFORD: Objection. Form. 11 A. I mean, it's taken out of context. 12 I'm reading two pages of a 300-and-some-page 13 document. It looks like Mr. Kobak is stating 14 that he was transferring or willing to transfer 15 assets that he thought was part of the deal. 16 Q. And those assets included collateral 17 pledged by LBI to the Options Clearing 18 Corporation and held for OCC's benefit at 19 JPMorgan Chase, right? 20 A. That's what it says, yes. 21 Q. That -- 22 A. That's what the question says. 23 Q. You understand that to be different 24 from property, customer property held by LBI to 25 secure customer positions?</p>	<p>1 D. McIsaac 2 MR. OXFORD: Objection. Form. 3 A. I'm not sure of what assets were being 4 held at JPMorgan Chase. It looks like he's 5 saying cash in this reference and it looks like 6 he's assuming it was part of the liabilities. 7 So it might have been the cash that was payable 8 to the customers who put up margin for the OCC 9 trades, and he thought he was just transferring 10 the cash against those liabilities. 11 Q. Would that be cash held by LBI or cash 12 held by JPMorgan under your interpretation of 13 what this may be referring to? 14 A. It would be cash held by LBI at 15 JPMorgan. 16 Q. For whose benefit? 17 A. LBI's. 18 Q. Okay. This seems to be talking about 19 cash that was held for the OCC's benefit at 20 JPMorgan Chase, do you see that? 21 A. It looks like it's being pledged to 22 the OCC for the benefit of LBI and it's held at 23 Chase. 24 Q. And you agree that this is property 25 held at Chase, not at LBI?</p>
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<p>1 D. McIsaac 2 MR. OXFORD: Objection. Form. 3 A. It's property held at LBI on deposit 4 at Chase. 5 Q. I'm showing you what has been marked 6 as Exhibit 25. Do you recognize this document? 7 A. I believe this is what's considered 8 the Clarification Letter. 9 Q. Did you rely on this in forming your 10 opinions in this case? 11 A. I reviewed this, yes. 12 Q. And is it your opinion that this 13 agreement does not encompass property held in 14 respect of OCC accounts to secure proprietary 15 positions of LBI as of September 19, 2008? 16 MR. OXFORD: Objection. Form. 17 A. I believe this does not indicate the 18 transfer or sale of LBI assets put up as margin 19 at the OCC. 20 Q. If you look at the top of page 2, 21 capital letter C in that first paragraph. And 22 this is a definition of the purchased assets. 23 It says, "Exchange-traded derivatives and any 24 property that may be held to secure obligations 25 under such derivatives." Do you see that?</p>	<p>1 D. McIsaac 2 A. Yes, I do. 3 Q. Do you agree with me that this 4 language is not limited to customer property? 5 MR. OXFORD: Objection. Form. 6 A. I don't know what the parenthetical 7 really means. I think in my report, if that's 8 what you're asking me, I think the 9 parenthetical, to be clear, if this was margin 10 posted, it would say -- it would say assets 11 posted to secure LBI's obligations. It doesn't 12 say that, so it's kind of ambiguous on what I'm 13 holding and what this clause means. 14 To me it means I'm holding it, which 15 means probably customers have given it to me to 16 secure their assets -- their transactions. 17 Q. It doesn't strike you as ambiguous 18 that it doesn't say customer property and you're 19 willing to assume that any property is 20 customer -- strike that. Do you agree with me 21 that the language here nowhere references 22 customer property? 23 A. Yes. 24 Q. Do you see the reference to any 25 property?</p>

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<p>1 D. McIsaac</p> <p>2 A. No. I see a reference to any</p> <p>3 property.</p> <p>4 Q. No reference to customer property</p> <p>5 appears on the face of this document; is that</p> <p>6 right?</p> <p>7 MR. OXFORD: Objection. Form.</p> <p>8 A. I believe that's correct. I haven't</p> <p>9 read the rest of it, but in that clause there's</p> <p>10 nothing there. I don't know if in -- if</p> <p>11 anything in paragraph C says anything to -- you</p> <p>12 said the whole page. I don't know if anything</p> <p>13 in paragraph C says anything. I'm just looking</p> <p>14 at this clause you're talking about.</p> <p>15 Q. Uh-huh.</p> <p>16 MR. OXFORD: Just so we're clear,</p> <p>17 Trish's question was about the whole</p> <p>18 document.</p> <p>19 MS. BLOOMER: No, my question is about</p> <p>20 this parenthetical.</p> <p>21 MR. OXFORD: Okay. Then you might</p> <p>22 want to clear up the record.</p> <p>23 Q. Does this parenthetical reference the</p> <p>24 term "customer property" or does it say "any</p> <p>25 property"?</p>	<p>1 D. McIsaac</p> <p>2 MR. OXFORD: Objection. Form.</p> <p>3 A. It says "any property."</p> <p>4 Q. You said that you thought it would be</p> <p>5 ambiguous to say "property that may be held" if</p> <p>6 what you really meant was "property posted,"</p> <p>7 correct?</p> <p>8 A. Yes, that's correct.</p> <p>9 Q. Is it also ambiguous to say "any</p> <p>10 property" if what you mean is "customer</p> <p>11 property"?</p> <p>12 A. I'm looking at the whole phrase and it</p> <p>13 says "any property that may be held to secure."</p> <p>14 I'm looking at the whole phrase, not just the</p> <p>15 two little words. I'm looking at the whole</p> <p>16 phrase and the way it's written.</p> <p>17 Q. And does the whole phrase reference</p> <p>18 customer property?</p> <p>19 MR. OXFORD: Objection. Form. Asked</p> <p>20 and answered.</p> <p>21 A. I believe to me, my opinion, this</p> <p>22 would refer to assets held by LBI, and the only</p> <p>23 assets they would have to secure obligations on</p> <p>24 the derivatives would be with customers or for</p> <p>25 counterparties.</p>
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<p>1 D. McIsaac</p> <p>2 Q. Does the language say "any property</p> <p>3 that may be held by LBI"?</p> <p>4 A. No, but to me, my opinion held to</p> <p>5 secure, if I'm writing this, if I'm part of this</p> <p>6 agreement, I would have to be holding it, not</p> <p>7 anybody else; and holding it, I mean and I have</p> <p>8 the obligation to return it to somebody.</p> <p>9 Q. Do you think the parties could have</p> <p>10 written "it may be held by or on behalf of LBI"</p> <p>11 if that's what they intended?</p> <p>12 MR. OXFORD: Objection. Form.</p> <p>13 A. I believe they could have written "and</p> <p>14 any property posted by LBI to secure their</p> <p>15 obligations."</p> <p>16 Q. Okay. If you look with me at</p> <p>17 paragraph 8 on page 4, the third line down</p> <p>18 reads, "Any and all property of any customer,</p> <p>19 including any held by or on behalf of LBI, to</p> <p>20 secure the obligations of any customer whose</p> <p>21 accounts are being transferred to purchaser as</p> <p>22 part of the business." Do you see that?</p> <p>23 A. Yes.</p> <p>24 Q. And it says "purchaser shall receive</p> <p>25 for the account of the customer any and all</p>	<p>1 D. McIsaac</p> <p>2 property of any customer, including any held by</p> <p>3 or on behalf of LBI to secure the obligations of</p> <p>4 any customer." Do you see that?</p> <p>5 A. Just let me read it again, please.</p> <p>6 "Shall receive ..."</p> <p>7 Yes.</p> <p>8 Q. So would you agree that in this</p> <p>9 paragraph when the parties intended to limit a</p> <p>10 phrase to "customer property held by or on</p> <p>11 behalf of LBI," they said "property of any</p> <p>12 customer held by or on behalf of LBI"?</p> <p>13 MR. OXFORD: Objection to form.</p> <p>14 Q. Would you agree with that?</p> <p>15 A. What -- excuse me. What was the</p> <p>16 question?</p> <p>17 Q. Would you agree that in this paragraph</p> <p>18 when the parties intended to limit a phrase to</p> <p>19 "customer property held by or on behalf of LBI,"</p> <p>20 they said "property of any customer held by or</p> <p>21 on behalf of LBI"?</p> <p>22 A. It says here "held by or on behalf of</p> <p>23 LBI." So I'm assuming that's what they wanted</p> <p>24 it to mean, but yes, I can't read into their</p> <p>25 mind what they said because I think you were</p>

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<p>1 D. McIsaac 2 referring is this what they meant to say, and I 3 don't know if this is what they meant to say. 4 This is what they said. 5 Q. And back to page 2, they didn't say 6 "any property of any customer," did they? 7 A. No, they did not. 8 Q. And they didn't say "by or on behalf 9 of LBI," did they? 10 A. No, they did not. 11 Q. Okay. 12 A. But they -- 13 Q. But you would read this language -- 14 MR. OXFORD: Excuse me, Trish. Mr. 15 McIsaac wasn't finished with his last 16 sentence. 17 A. But as clearly as they defined it 18 here, why wouldn't they have clearly defined it 19 over here? 20 Q. Perhaps because -- could it be because 21 they were referring to two different categories 22 of assets? 23 A. I don't know, but they clearly -- 24 Q. Is that possible? 25 A. I guess anything is possible. I don't</p>	<p>1 D. McIsaac 2 know why they would have been so clear in a 3 definition here and not so clear in the 4 definition over here. 5 Q. Did you consider that they were being 6 perfectly clear and that they were referring to 7 two different sets of assets and that's why they 8 described them differently? 9 MR. OXFORD: Objection. Form. Asked 10 and answered. 11 A. To me, it wasn't clear. So, no, it 12 wouldn't have been clear to me because to me if 13 I was transferring the margin that I had posted 14 at exchanges, that would be the clear 15 definition. 16 I think over here, where they talk 17 about -- they're talking about held by and on 18 the behalf of LBI, that means LBI is holding it, 19 but it may be at JPMorgan or someplace else. So 20 I think this is fairly clear. I don't think the 21 first clause is that clear as to what they meant 22 by it. 23 Q. Do you agree that exchanges and 24 clearing corporations hold property to secure 25 obligations of derivatives that their clearing</p>
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<p>1 D. McIsaac 2 members hold? 3 A. Clearing organizations require margin 4 to be held for the obligations of the clearing 5 member. I believe that was your question. 6 Q. So the OCC holds property just as LBI 7 holds property; is that right? 8 A. That's correct, and the OCC's 9 responsibility would be to return to me the 10 property because I posted it with them and my 11 responsibility no matter where it is to return 12 that property to whoever gave it to me no matter 13 where I posted it. 14 Q. In your opinion does paragraph 8 15 encompass anything that is not encompassed by 16 the parenthetical on page 2? 17 MR. OXFORD: Objection. Form. You 18 mean the whole of paragraph 8 or to specific 19 subsections you referred him to earlier? 20 MS. BLOOMER: I mean the sentence that 21 we've been focusing on, which starts "in 22 connection therewith" and reads through 23 "whose accounts are being transferred to 24 purchaser as part of the business." 25 Q. Do you see the language that I refer</p>	<p>1 D. McIsaac 2 you to? Does this encompass anything, in your 3 opinion, that's not already encompassed by 4 paragraph C on page 2 and the parenthetical? 5 MR. OXFORD: Objection. Form. Calls 6 for a legal conclusion, but you can answer. 7 A. Yeah, I mean, it's a legal document. 8 My assumption is that on this is this is not 9 just referring to exchange-traded derivatives, 10 this is referring to the entire account of a 11 customer that would be transferred to Barclays. 12 So if they were holding equity securities at DTC 13 for the customer, we would transfer them to 14 Barclays. 15 Q. And in your opinion, the parenthetical 16 on page 2 -- do you believe that the 17 parenthetical on page 2 is unambiguous in terms 18 of the property that it's referring to? 19 MR. OXFORD: Objection. Asked and 20 answered. 21 A. It doesn't define the property. It 22 just defines any property that may be held to 23 secure obligations under such derivatives. 24 Again, I believe that's any property held by 25 LBI, not posted by LBI, because if it was</p>

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1 D. McIsaac
2 posted, I think the words would have been used
3 "posted" or "held by" or someplace else further
4 clarification I think would be included.
5 Q. Are assets posted at the OCC by LBI as
6 of September 19, 2008 property held by the OCC
7 to secure obligations under the derivatives held
8 in the OCC accounts?
9 A. I just want to make sure I have your
10 question clear. I believe the question was, is
11 the property held at OCC there to secure the
12 obligations in the accounts at OCC?
13 Q. No, that wasn't my question.
14 A. Okay.
15 Q. Are assets posted at the OCC by LBI
16 property that is held by the OCC to secure
17 obligations under the derivatives in the OCC
18 accounts?
19 MR. OXFORD: Objection. Form.
20 A. It's property held by OCC. It may be
21 excess, but it's in the accounts to secure it.
22 Some of it may be used to secure obligations.
23 Some of it may be excess collateral.
24 Q. Okay. I'm showing you a document
25 that's marked as Exhibit 690.

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1 D. McIsaac
2 transaction?
3 A. Uh-huh.
4 Q. Okay. And then you see that Mr. Kobak
5 and Mr. Giddens are also copied on this e-mail?
6 A. Yes.
7 Q. And that's the Trustee and his
8 counsel, correct?
9 A. That's correct.
10 Q. The first sentence of the e-mail says,
11 "To the group: OCC is seeking to confirm its
12 understanding that the LBI accounts and all
13 positions, cash and securities collateral that
14 are held by OCC in respect of those accounts are
15 intended to be transferred to Barclays and that
16 Barclays is assuming all obligations with
17 respect to those accounts." Do you see that?
18 A. Yes.
19 Q. Do you believe -- are you aware of any
20 recipient of this e-mail responding to this and
21 telling the OCC that Barclays was not to receive
22 the cash and securities collateral held by the
23 OCC in respect of the OCC accounts?
24 A. I am not aware of anybody sending an
25 e-mail back saying that.

1 D. McIsaac
2 (Exhibit 690, a document bearing Bates
3 Nos. CGSH33921 through 922, marked for
4 identification, as of this date.)
5 Q. Could you take a moment to review this
6 e-mail.
7 (Document review.)
8 Q. Have you had a chance to review the
9 document?
10 A. Yes. Yes.
11 Q. The first sentence of the e-mail from
12 James McDaniel at Sidley --
13 Do you know who James McDaniel at
14 Sidley is?
15 A. I believe he's one of their counsels.
16 Q. One of whose counsel?
17 A. Sidley's counsels for the OCC.
18 Q. For the OCC. Okay.
19 And on September 20, this e-mail is
20 sent. You see that it's copied to several
21 individuals from Weil? Do you understand that
22 to be Weil Gotshal?
23 A. Yes.
24 Q. And you understand that that is the
25 law firm that represented LBHI in this

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1 D. McIsaac
2 Q. You said earlier that the margin at
3 the OCC was of significant value, did you not?
4 A. Yes.
5 Q. Would you have expected any recipient
6 of this e-mail to raise an objection to the
7 OCC's stated intent if they were not of the same
8 understanding as to who would be entitled to the
9 cash and securities collateral held by OCC in
10 respect of the OCC accounts?
11 MR. OXFORD: Objection. Form.
12 A. I believe this is advising the
13 individuals that the OCC is assuming that the
14 assets are being transferred, and in the second
15 paragraph it is saying, "It is our understanding
16 that certain parts of the APA are still being
17 negotiated."
18 So I'm assuming in the interim while
19 they're negotiating the final documents that the
20 OCC wants the -- I'm guessing this is the Asset
21 and Assumption Agreement -- Transfer and
22 Assumption Agreement to be signed.
23 Q. You see at the very beginning of the
24 e-mail it says, "OCC is seeking to confirm its
25 understanding that all cash and securities

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<p>1 D. McIsaac 2 collateral are intended to be transferred to 3 Barclays"; Do you see that? 4 A. Yes. 5 Q. If it's true, as you suggest it may 6 be, that the Purchase Agreement is still being 7 negotiated -- 8 A. I didn't say that. I'm sorry. Mr. 9 McDaniel is saying that. 10 Q. Would you expect when the terms of 11 this transaction were confirmed, that if indeed 12 it was the case that Barclays was not to receive 13 the cash and securities collateral held at the 14 OCC, the Trustee and LBI would have been prudent 15 to inform the OCC of that fact? 16 A. Yes. 17 MR. OXFORD: Objection. Asked and 18 answered. 19 Q. Have you seen any evidence in the 20 record that either the Trustee or LBI's 21 attorneys informed the OCC that Barclays was not 22 intended to receive the cash and securities 23 collateral at the OCC? 24 A. No. I think, as I've discussed 25 before, the Transfer and Assumption Agreement is</p>	<p>1 D. McIsaac 2 a means to allow Barclays to start trading the 3 next day and protecting the OCC. Whatever the 4 agreement was regarding those assets that are 5 being transferred and what payment had to be 6 made for them or not be made for them would I 7 expect to be part of an agreement. 8 Q. Do you agree that if the parties 9 hadn't intended for these assets at the OCC to 10 be transferred to Barclays, it would have been 11 prudent for them to inform the OCC of that? 12 MR. OXFORD: Objection. Form. 13 A. Yes. As I said, it would have been 14 prudent, if they didn't think that all the 15 assets should have been transferred, it would 16 have been prudent to tell the OCC that they were 17 not agreeing to that. 18 Q. And have you seen any evidence in the 19 record in which any party told the OCC that they 20 did not intend that? 21 A. No, I have not seen anything in the 22 record that states that. 23 MS. BLOOMER: I think if you'll give 24 me a few minutes, I might be wrapped up and 25 we can have Amy come in and start the second</p>
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<p>1 D. McIsaac 2 part of the deposition. 3 MR. OXFORD: Okay. Let's go off the 4 record. 5 THE VIDEOGRAPHER: The time is 4:13. 6 This is the end of the tape labeled number 7 4. We're going off the record. 8 (Recess.) 9 (Exhibit 691, Affidavit of Daniel 10 McIsaac, marked for identification, as of 11 this date.) 12 (Exhibit 692, Supplemental Affidavit 13 of Daniel McIsaac, marked for 14 identification, as of this date.) 15 (Exhibit 693, Rebuttal Report of 16 Daniel McIsaac, marked for identification, 17 as of this date.) 18 THE VIDEOGRAPHER: This is the start 19 of tape labeled number 6. The time is 4:45. 20 We're back on the record. 21 EXAMINATION BY 22 MS. NEUHARDT: 23 Q. Good afternoon, Mr. McIsaac. My name 24 is Amy Neuhardt and I'm representing Barclays 25 and I'm here to discuss with you the reports</p>	<p>1 D. McIsaac 2 that I have put in front of you as Exhibits 691, 3 692 and 693. And could you identify those for 4 the record for me? 5 A. 691 is my affidavit that was filed 6 with the original motion. 69 -- 7 Q. Do you mean the original allocation 8 motion? 9 A. Allocation motion. I'm sorry. 10 692 is the Supplemental Affidavit 11 filed with the court on or about February 27, 12 and 693 is the Rebuttal Report. 13 Q. Okay. Very good. Now, in 691 if you 14 could turn to paragraph 5, and in that you say, 15 "Based on my experience in the public and 16 private sectors, I am fully familiar with the 17 SEC rules governing financial responsibility of 18 SEC registered broker-dealers and the protection 19 of customer property and with industry practices 20 regarding the handling of customer property and 21 compliance with SEC Customer Protection Rules." 22 And unless I'm mistaken, which you may 23 take a look, paragraph 2 of your Rebuttal Report 24 contains a very similar statement. Can you just 25 confirm that? It's the last sentence.</p>

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<p>1 D. McIsaac</p> <p>2 A. Uh-huh.</p> <p>3 Q. So are you offering opinions as an</p> <p>4 expert in any substantive area other than what</p> <p>5 you're describing in this sentence that appears</p> <p>6 in 691 and 693?</p> <p>7 A. When you say -- I'm -- if you can</p> <p>8 clarify what that means. I'm not sure what you</p> <p>9 mean by that.</p> <p>10 Q. Sure. Absolutely. In particular, are</p> <p>11 you putting yourself forth as an expert in SIPA</p> <p>12 statutory or regulatory requirements?</p> <p>13 A. No.</p> <p>14 Q. Okay. Are you putting yourself</p> <p>15 forward as an expert on the practices of SIPC</p> <p>16 trustees?</p> <p>17 A. No.</p> <p>18 Q. Okay. Are you putting yourself</p> <p>19 forward as an expert on the Bankruptcy Code?</p> <p>20 A. No.</p> <p>21 Q. All right. Now, when you say you were</p> <p>22 familiar with the SEC rules governing financial</p> <p>23 responsibility of SEC registered broker-dealers</p> <p>24 and the protection of customer property, are you</p> <p>25 purporting to be an expert in the legal</p>	<p>1 D. McIsaac</p> <p>2 interpretation of those rules?</p> <p>3 A. I have spent a good part of 30 years</p> <p>4 in the industry working on the last 20 years of</p> <p>5 the preparation of the -- my two firms weekly.</p> <p>6 I have monthly 3-3 calculations. I'm a licensed</p> <p>7 Fin. Op., Series 27, so I interpret -- I would</p> <p>8 have to review and interpret the rules and the</p> <p>9 interpretations of those rules.</p> <p>10 Q. Okay. Are you a lawyer?</p> <p>11 A. No, I am not.</p> <p>12 Q. So your testimony is based on your</p> <p>13 practice in interpreting 15c3-3, but not based</p> <p>14 on experience as a lawyer doing legal analysis;</p> <p>15 is that correct?</p> <p>16 A. I am -- sorry.</p> <p>17 MR. OXFORD: Objection. Form. You</p> <p>18 can answer.</p> <p>19 A. I'm not a lawyer and most people who</p> <p>20 work on the reserve formula I believe are not</p> <p>21 lawyers.</p> <p>22 Q. Okay. Now, when you say you are</p> <p>23 familiar with industry practices regarding the</p> <p>24 handling of customer property and compliance</p> <p>25 with SEC Customer Protection Rules, are you</p>
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<p>1 D. McIsaac</p> <p>2 purporting to be an expert in the operations and</p> <p>3 processing systems used by Lehman that were fed</p> <p>4 into the reserve calculation?</p> <p>5 MR. OXFORD: Hold on. Objection to</p> <p>6 form. Sorry.</p> <p>7 Q. By reserve calculation, I am referring</p> <p>8 to the calculation required under SEC Rule</p> <p>9 15c3-3. Will you understand that that's what I</p> <p>10 mean when I say "reserve calculation" throughout</p> <p>11 the deposition?</p> <p>12 A. The allocation formula?</p> <p>13 Q. Yes.</p> <p>14 A. Yes.</p> <p>15 MR. OXFORD: Same objection. Do you</p> <p>16 have the question in mind?</p> <p>17 A. No, maybe --</p> <p>18 Q. So when you say you were familiar with</p> <p>19 industry practices regarding the handling of</p> <p>20 customer property and compliance with SEC</p> <p>21 customer rules, are you purporting to be an</p> <p>22 expert in the operations and processing systems</p> <p>23 used by Lehman that were fed into the reserve</p> <p>24 calculation?</p> <p>25 A. When you say an expert in the systems,</p>	<p>1 D. McIsaac</p> <p>2 I am not a systems analyst. I am not a systems</p> <p>3 programmer. I --</p> <p>4 Q. Okay. So you are not familiar with --</p> <p>5 MR. OXFORD: Let him --</p> <p>6 Q. I apologize.</p> <p>7 A. That's all right.</p> <p>8 Q. I realize you weren't through.</p> <p>9 A. I am very familiar with the allocation</p> <p>10 process and what people preparing the report</p> <p>11 will look to see out of the allocation process.</p> <p>12 Q. Okay. So are you familiar with the</p> <p>13 ADP system?</p> <p>14 A. Yes, I am.</p> <p>15 Q. Okay. The ITS system?</p> <p>16 A. No, not necessarily.</p> <p>17 Q. Okay. NTS?</p> <p>18 A. I am familiar with fixed income</p> <p>19 systems.</p> <p>20 Q. Okay. And the RISC, R-I-S-C, system?</p> <p>21 A. I am not intimately familiar with it.</p> <p>22 Q. Okay. Have you ever had any prior</p> <p>23 experience in forensic accounting?</p> <p>24 A. No.</p> <p>25 Q. Okay. Now, are you aware that the</p>

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<p>1 D. McIsaac</p> <p>2 Trustee and Barclays are currently in a dispute</p> <p>3 regarding the interpretation of a contract under</p> <p>4 which Barclays purchased assets from the former</p> <p>5 Lehman Brothers estate?</p> <p>6 A. Yes, I am. I sat here through four</p> <p>7 hours of a deposition on that.</p> <p>8 Q. Yes. I just don't want a foundation</p> <p>9 objection from Neil over there.</p> <p>10 Okay. Are you purporting to offer any</p> <p>11 opinion on the interpretation of the language in</p> <p>12 that contract?</p> <p>13 MR. OXFORD: Objection. Form.</p> <p>14 A. I don't know if you're going to ask me</p> <p>15 a question on it, but I don't -- I don't think</p> <p>16 this allocation motion was part of -- looked</p> <p>17 at -- I might have reviewed that, but it wasn't</p> <p>18 part of reliance.</p> <p>19 Q. Have you been asked by anybody to</p> <p>20 analyze the contract?</p> <p>21 MR. OXFORD: Is your question, because</p> <p>22 as Mr. McIsaac says, we have sat through</p> <p>23 almost five hours of questioning --</p> <p>24 MS. NEUHARDT: A lot.</p> <p>25 MR. OXFORD: -- from your colleague in</p>	<p>1 D. McIsaac</p> <p>2 connection with the Asset Purchase Agreement</p> <p>3 and various other documents. It would be</p> <p>4 clearer for me and perhaps also for the</p> <p>5 witness it will make things a little quicker</p> <p>6 if you could clarify if your questions are</p> <p>7 relating solely to the three affidavits and</p> <p>8 reports that you have premarked.</p> <p>9 MS. NEUHARDT: Yes, they are.</p> <p>10 Q. I am purely asking whether you have</p> <p>11 been asked to interpret the contract as it</p> <p>12 relates to assets in the reserve accounts or</p> <p>13 substitute assets for what would be in the</p> <p>14 reserve account? That doesn't help --</p> <p>15 MR. OXFORD: I still have an objection</p> <p>16 to form, but you can answer if you're able.</p> <p>17 A. I'm not sure where you're going. I</p> <p>18 thought there was only one thing in the</p> <p>19 allocation motion that talked to the contract</p> <p>20 with Barclays, and that's the OCC deposit.</p> <p>21 Q. Okay. Have you examined any other</p> <p>22 part of the contracts other than the portion</p> <p>23 that relates to the OCC margin other than in</p> <p>24 this morning's portion of the deposition?</p> <p>25 A. In relation to?</p>
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<p>1 D. McIsaac</p> <p>2 Q. To your opinion as set forth in the</p> <p>3 three exhibits sitting in front of you?</p> <p>4 A. I don't think I placed reliance on the</p> <p>5 APA to review whether or not the 3-3 was in</p> <p>6 compliance with the rules.</p> <p>7 Q. Okay. Did you place any reliance on</p> <p>8 the Clarification Letter?</p> <p>9 A. Again, I don't know, in relation to</p> <p>10 this, if I placed any reliance on it.</p> <p>11 Q. You don't know if you placed reliance</p> <p>12 on it?</p> <p>13 A. I don't think I placed any reliance on</p> <p>14 that. I was asked to review the 3-3 allocation</p> <p>15 and what could be or compliance issues thereto.</p> <p>16 Q. Okay. If you could turn to the first</p> <p>17 exhibit in -- the first exhibit in the first</p> <p>18 exhibit, which is your resumé, and it should be</p> <p>19 tagged with a purple tag.</p> <p>20 A. Yes.</p> <p>21 Q. This is your resumé, correct?</p> <p>22 A. Yes, it is.</p> <p>23 Q. It says you have a bachelor of science</p> <p>24 in accounting from Lehman College; is that</p> <p>25 correct?</p>	<p>1 D. McIsaac</p> <p>2 A. Yes.</p> <p>3 Q. Okay. Do you have any other formal</p> <p>4 education?</p> <p>5 A. No postgraduate. No postgraduate</p> <p>6 education.</p> <p>7 Q. So you did no work toward a degree</p> <p>8 that you then did not receive?</p> <p>9 A. No.</p> <p>10 Q. So you've taken the courses in law?</p> <p>11 A. I've taken the courses that were</p> <p>12 required for my CPA certification.</p> <p>13 Q. Did that include any courses in law?</p> <p>14 A. Yes. Business law I think was a</p> <p>15 requirement.</p> <p>16 Q. Business law, okay. All right, that's</p> <p>17 all I have about your education.</p> <p>18 Now, this shows the most recent</p> <p>19 position as you being at UBS Securities. You do</p> <p>20 not still work at UBS, do you?</p> <p>21 A. No, I left UBS in June.</p> <p>22 Q. In June of 2009?</p> <p>23 A. 9.</p> <p>24 Q. Okay. And why did you leave?</p> <p>25 A. There was downsizing at UBS.</p>

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<p>1 D. McIsaac 2 Q. And where do you currently work? 3 A. Currently today I work for KPMG. 4 Q. And how long have you been at KPMG? 5 A. Three weeks. 6 Q. Three weeks? Okay. What's your 7 position there? 8 A. Director of Regulatory Advisory. 9 Q. Okay. And did you hold any position 10 between UBS and KPMG? 11 A. Between then I was acting as an 12 independent consultant. 13 Q. And was that as independent consultant 14 to the Trustee on this matter? 15 A. That, and I had other clients I was 16 doing work for. 17 Q. Can you tell me the other clients? 18 A. It's confidential, I would think. 19 Q. It's confidential. All right. 20 When did you first begin doing 21 consulting work for the Trustee? 22 A. On or about the middle of July. 23 Q. Did you perform any work for Lehman 24 Brothers Holdings, Inc. as an independent 25 consultant?</p>	<p>1 D. McIsaac 2 A. No. 3 Q. Okay. Did you serve any function for 4 the Trustee other than as an expert witness for 5 this matter in your independent consulting? 6 A. I provided an expert report on the 7 derivatives, and I provided two other -- I think 8 they're called affidavits for other issues 9 regarding customer protection. 10 Q. Do you know if those affidavits were 11 filed in the public record? 12 A. I believe they were, but I don't know. 13 I can't say for sure. 14 Q. Okay. And did you perform any other 15 services for the Trustee? 16 A. From time to time. 17 MR. OXFORD: I'll let you answer that 18 question yes or no, Mr. McIsaac. 19 A. Yes. 20 Q. Okay. I think I know what's coming. 21 Can you describe for me the nature of 22 the services you performed for the Trustee? 23 MR. OXFORD: I'm going to object to 24 the form of that question and instruct you 25 not to answer.</p>
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<p>1 D. McIsaac 2 MS. NEUHARDT: And what's the basis of 3 your instruction? 4 MR. OXFORD: It's privileged. 5 MS. NEUHARDT: Can you describe for me 6 the basis of the privilege? 7 MR. OXFORD: Yes. Mr. McIsaac has 8 been retained as a consultant by the Trustee 9 to provide professional advice. 10 MS. NEUHARDT: Are you representing 11 that none of the other services that he 12 performed for the Trustee relate in any way 13 to his opinions that have been proffered in 14 these three exhibits? 15 MR. OXFORD: That is my understanding. 16 MS. NEUHARDT: That's your 17 representation on the record? 18 MR. OXFORD: That's my best 19 understanding. 20 Q. Okay. Now, other than the positions 21 with KPMG and your independent consulting that 22 we have discussed, are there any other 23 professional positions that you have held in the 24 last 20 years that are not reflected on this 25 resumé?</p>	<p>1 D. McIsaac 2 A. I've been a chair -- well, it's in the 3 resumé. So, no, everything's in the resumé. 4 Q. Now, in your work as an independent 5 consultant, and I'm referring specifically to 6 your work on the expert reports that are in 7 front of you, did you have any staff assisting 8 you? 9 A. No, I did not. 10 Q. Okay. All right. I'm going to start 11 with at UBS, could you explain to me how your 12 position at UBS gave you experience with 13 industry practices regarding the handling of 14 customer property and compliance with SEC 15 customer rules? 16 A. Yes. I was the Fin. Op. for UBS 17 Securities Financial Operational Principal. I 18 signed the Focus Reports. I took all 19 responsibility on the financial information 20 filed with the regulators. I supervised the 21 reserve formula calculation, the net capital 22 calculations, the seg and secured calculations, 23 as well as the filing of the Focus Reports. 24 Q. Okay. And did you ever personally do 25 the reserve calculation?</p>

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<p>1 D. McIsaac</p> <p>2 A. I worked on it as a more junior</p> <p>3 person.</p> <p>4 Q. When you were at UBS?</p> <p>5 A. No. No.</p> <p>6 Q. Was that in one of your prior</p> <p>7 positions?</p> <p>8 A. At Dean Witter I managed a group. I</p> <p>9 also did some work on it from time to time when</p> <p>10 somebody was out.</p> <p>11 Q. At Dean Witter that was not a part of</p> <p>12 your regular duties? You worked on it if</p> <p>13 someone was out?</p> <p>14 A. I supervised it. It came under my --</p> <p>15 I managed a group that did it, the people that</p> <p>16 did it.</p> <p>17 Q. Okay. You mentioned that you hold a</p> <p>18 Series 27 license. Do you hold any other</p> <p>19 professional licenses?</p> <p>20 A. No.</p> <p>21 Q. Have you in the past?</p> <p>22 A. Oh, sorry. I take that back. A CPA</p> <p>23 license.</p> <p>24 Q. I was just going to ask you.</p> <p>25 A. No. I was thinking when you say that</p>	<p>1 D. McIsaac</p> <p>2 along the lines of other series, but, yes, CPA.</p> <p>3 Q. Are you in any professional</p> <p>4 organizations?</p> <p>5 A. I'm a member of the AICPA, the New</p> <p>6 York State Society of CPAs. I'm a member of the</p> <p>7 Financial Management Division of SIFMA, the</p> <p>8 Securities Industry and Financial Markets</p> <p>9 Association. I'm past president of the</p> <p>10 Financial Markets Division, the Financial</p> <p>11 Management Division I think it's called, and up</p> <p>12 until three weeks ago when I took the job at KPM</p> <p>13 I chaired the SIFMA Capital Committee.</p> <p>14 Q. Did the AICPA study in any way SEC</p> <p>15 Rule 15c3-3?</p> <p>16 A. The AICPA has issued an audit guide</p> <p>17 for the auditing of securities broker-dealers.</p> <p>18 Q. Did you have any involvement in that?</p> <p>19 A. I might have had some involvement of</p> <p>20 it when I was at Deloitte in a past life of</p> <p>21 reviewing it possibly, but that was many</p> <p>22 editions ago.</p> <p>23 Q. Okay. And did the New York State</p> <p>24 Society for CPAs have any involvement in</p> <p>25 interpreting Rule 15c3-3?</p>
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<p>1 D. McIsaac</p> <p>2 A. No.</p> <p>3 Q. Okay. And the same question for</p> <p>4 SIFMA?</p> <p>5 A. Yes, the capital committee is</p> <p>6 intimately involved in the capital rules and</p> <p>7 Customer Protection Rules.</p> <p>8 Q. Okay. Have you ever served as an</p> <p>9 expert witness before?</p> <p>10 A. No. Four hours ago.</p> <p>11 Q. Other than in this matter?</p> <p>12 A. No.</p> <p>13 Q. Very good. Okay. Now, as an expert</p> <p>14 relating to the reports that are in front of you</p> <p>15 right now, not what you discussed with Ms.</p> <p>16 Bloomer this morning, how many hours of time</p> <p>17 have you billed to the Trustee in putting</p> <p>18 together your opinions here?</p> <p>19 A. On the two of these?</p> <p>20 Q. Uh-huh.</p> <p>21 A. I'd have to go back, but it was</p> <p>22 hundreds.</p> <p>23 Q. Can you give me a range?</p> <p>24 A. Maybe three to four hundred.</p> <p>25 Q. Do you know how much you have billed?</p>	<p>1 D. McIsaac</p> <p>2 A. No, I don't.</p> <p>3 Q. Have you ever written any</p> <p>4 publications?</p> <p>5 A. No.</p> <p>6 Q. Okay. In the -- you say you've spent</p> <p>7 hundreds of hours on these two reports. Do you</p> <p>8 have a sense of how much was devoted to the</p> <p>9 original affidavit of October 5?</p> <p>10 MR. OXFORD: Objection. Form.</p> <p>11 You can answer if you're able.</p> <p>12 A. Maybe a couple hundred. I don't -- I</p> <p>13 don't recall how much exactly. Probably a</p> <p>14 little bit more than 200, but I don't remember.</p> <p>15 MS. NEUHARDT: I think under the</p> <p>16 stipulation we're entitled to that</p> <p>17 information, so perhaps you can provide that</p> <p>18 to us later today or tomorrow.</p> <p>19 MR. OXFORD: I don't think I can get</p> <p>20 it to you later today, but I will certainly</p> <p>21 take your request under advisement.</p> <p>22 MS. NEUHARDT: Okay.</p> <p>23 Q. Have you ever been involved in a SIPC</p> <p>24 liquidation before?</p> <p>25 A. No.</p>

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<p>1 D. McIsaac</p> <p>2 Q. Have you ever been involved in</p> <p>3 performing 15c3-3 calculations at the time of a</p> <p>4 merger or an acquisition?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. Could you tell me when that</p> <p>7 would be?</p> <p>8 A. UBS merged with SBC on or about June</p> <p>9 29, 1998. There was a merger with various</p> <p>10 acquisitions of various assets of PaineWebber</p> <p>11 that were included as part of the acquisition of</p> <p>12 UBS Securities acquired some of the assets, and</p> <p>13 that was somewhere around November of 2000.</p> <p>14 Q. Okay.</p> <p>15 A. We at UBS purchased the prime</p> <p>16 brokerage business from ABN Amro I want to say</p> <p>17 it's around 2003, but I'm fuzzy on the time.</p> <p>18 We purchased a futures business, but</p> <p>19 that didn't have anything to do with 3-3, and</p> <p>20 probably some other asset purchases or smaller</p> <p>21 type purchase of assets or businesses along the</p> <p>22 way.</p> <p>23 Q. Okay. All right. Now we're going to</p> <p>24 get into the substance of your opinions. Under</p> <p>25 SEC Rule 15c3-3, prior to filing for</p>	<p>1 D. McIsaac</p> <p>2 liquidation, are the assets in a reserve account</p> <p>3 considered the property of the broker-dealer or</p> <p>4 the property of customers?</p> <p>5 A. The assets have to be the property of</p> <p>6 the broker-dealer because they're their assets.</p> <p>7 Q. Okay. So would customer property as</p> <p>8 defined under SEC Rule 15c3-3 ever be put in the</p> <p>9 reserve account?</p> <p>10 MR. OXFORD: Objection. Form.</p> <p>11 You can answer.</p> <p>12 A. Customer's property that they own,</p> <p>13 such as securities, would be included in the</p> <p>14 reserve formula based on an allocation of those</p> <p>15 assets and the use of those assets.</p> <p>16 Q. But would the securities be placed in</p> <p>17 the reserve account?</p> <p>18 A. In the 15c3 reserve account?</p> <p>19 Q. Correct.</p> <p>20 A. No.</p> <p>21 Q. Okay. Do you know how many accounts</p> <p>22 LBI had that comprised its reserve account under</p> <p>23 SEC Rule 15c3?</p> <p>24 A. You'll have to define what you mean by</p> <p>25 "accounts." I don't --</p>
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<p>1 D. McIsaac</p> <p>2 Q. Well, they -- are you aware that there</p> <p>3 was a bank account at Wells Fargo that was used</p> <p>4 for part of the reserve account?</p> <p>5 A. There was a, I believe, a reserve</p> <p>6 formula account, an account for the benefit of</p> <p>7 customers at Wells Fargo.</p> <p>8 Q. Correct. Do you know how many such</p> <p>9 accounts LBI held?</p> <p>10 A. If my memory is correct, it was three</p> <p>11 or four, I believe.</p> <p>12 Q. Okay. And do you remember what banks</p> <p>13 those were at other than Wells Fargo, which we</p> <p>14 have discussed?</p> <p>15 A. I believe there might have been</p> <p>16 something at JPMorgan, but I don't remember</p> <p>17 exactly, and I don't remember the other two.</p> <p>18 Q. What was the total amount as of</p> <p>19 September 19, 2008 that was in LBI's reserve</p> <p>20 accounts?</p> <p>21 A. I'd have to look in my report for the</p> <p>22 exact number, but I believe it was about a</p> <p>23 billion-17 -- a billion-760 million, something</p> <p>24 on that nature.</p> <p>25 Q. Could you show me in your report where</p>	<p>1 D. McIsaac</p> <p>2 you got that number?</p> <p>3 MR. OXFORD: Amy, are you asking a</p> <p>4 question where he got it or where it is in</p> <p>5 the report?</p> <p>6 MS. NEUHARDT: It's the source, what</p> <p>7 his source is for the -- his testimony that</p> <p>8 that is the total amount that was locked up</p> <p>9 as of that date.</p> <p>10 MR. OXFORD: Okay.</p> <p>11 A. So not where it is in here?</p> <p>12 Q. Hum?</p> <p>13 A. Not where --</p> <p>14 Q. Well --</p> <p>15 A. I'm confused.</p> <p>16 Q. -- if it's not in there, I would like</p> <p>17 to know what it is that you did rely upon. And</p> <p>18 we do have materials that your counsel -- LBI's</p> <p>19 counsel produced that you purported to rely on.</p> <p>20 And you can check in there if you want, but if</p> <p>21 it's attached to your report, that would be</p> <p>22 easier.</p> <p>23 A. You'll have to give me a minute to go</p> <p>24 through it. I don't know if it's ...</p> <p>25 Q. While you're looking, I can ask the</p>

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<p>1 D. McIsaac</p> <p>2 question, did you look at the bank account</p> <p>3 statements for each of the three or four</p> <p>4 accounts that we discussed earlier?</p> <p>5 A. No. The Trustee's financial</p> <p>6 professionals provided me with the schedule of</p> <p>7 what was in the accounts.</p> <p>8 Q. And by "financial professionals," who</p> <p>9 are you referring to?</p> <p>10 A. I believe it came from legal counsel.</p> <p>11 Q. From legal counsel. It didn't come</p> <p>12 from Deloitte?</p> <p>13 A. It might come from Deloitte</p> <p>14 eventually, but it was given to me by legal</p> <p>15 counsel.</p> <p>16 Q. And did you do any independent</p> <p>17 investigation of the correctness of the</p> <p>18 materials supplied to you by legal counsel?</p> <p>19 A. No.</p> <p>20 Q. You know what, why don't we have you</p> <p>21 look for that on a break and go on in an effort</p> <p>22 to --</p> <p>23 A. Sure.</p> <p>24 Q. -- save time.</p> <p>25 Under SEC Rule 15c3-3, if there is an</p>	<p>1 D. McIsaac</p> <p>2 excess in the reserve account, is that held for</p> <p>3 the exclusive benefit of customers?</p> <p>4 A. Everything in that account is held for</p> <p>5 the exclusive benefit of customers.</p> <p>6 Q. So is it your testimony that even</p> <p>7 amounts that are not required to be held there</p> <p>8 are for the benefit of customers?</p> <p>9 MR. OXFORD: Objection. Asked and</p> <p>10 answered. You can answer again.</p> <p>11 A. If it's held in there, it's for the</p> <p>12 exclusive benefit of customers.</p> <p>13 Q. Okay. Is a broker-dealer allowed to</p> <p>14 withdraw excess?</p> <p>15 MR. OXFORD: Objection. You can</p> <p>16 answer.</p> <p>17 A. A broker-dealer can make withdrawals</p> <p>18 and deposits based on calculations.</p> <p>19 Q. Okay. And is there any requirement</p> <p>20 that a broker-dealer receive SEC approval before</p> <p>21 making a withdrawal of excess?</p> <p>22 A. I do not believe there's any</p> <p>23 requirement to get the approval of the SEC in</p> <p>24 the normal course.</p> <p>25 Q. Okay. Now, you qualified your last</p>
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<p>1 D. McIsaac</p> <p>2 answer by saying you did not believe there was a</p> <p>3 requirement to get SEC approval in the normal</p> <p>4 course?</p> <p>5 A. Correct.</p> <p>6 Q. Do you believe there's a requirement</p> <p>7 to get SEC approval at any other time?</p> <p>8 A. Well, I would assume if you're in</p> <p>9 liquidation, you can't move moneys out of the</p> <p>10 account without the approval of the S.E.C., but</p> <p>11 I don't know that for a fact.</p> <p>12 Q. Okay. Are you basing your assumption</p> <p>13 on anything in SEC Rule 15c3-3?</p> <p>14 A. I don't believe anything I've seen</p> <p>15 there. What I've seen in the rules is basically</p> <p>16 you have to do a withdrawal -- a calculation</p> <p>17 before you can do a withdrawal.</p> <p>18 Q. Okay. In your rebuttal report,</p> <p>19 paragraph 13, you state that the -- I'll give</p> <p>20 you a moment to get to that. In the second</p> <p>21 sentence you state, "The only relevant point in</p> <p>22 time" --</p> <p>23 A. Excuse me. Excuse me. What</p> <p>24 paragraph?</p> <p>25 Q. 13. I'm sorry.</p>	<p>1 D. McIsaac</p> <p>2 A. Page 13.</p> <p>3 Q. No, paragraph 13, page 6.</p> <p>4 A. Oh, I'm sorry. I thought you said</p> <p>5 page 13.</p> <p>6 Q. No, my apologies.</p> <p>7 A. Okay.</p> <p>8 Q. Okay. Second sentence says, "The only</p> <p>9 relevant point in time for the purpose of</p> <p>10 determining the accuracy of LBI's reserve</p> <p>11 calculation as of September 19, 2008, is</p> <p>12 September 19, 2008."</p> <p>13 Why -- why do you believe that</p> <p>14 September 19, 2008 is the relevant date?</p> <p>15 A. That's the -- that's when the</p> <p>16 calculation is as of. So anything that has</p> <p>17 happened as of that date or known as of that</p> <p>18 date is what goes into the formula.</p> <p>19 Q. Why -- well, were you told to do a</p> <p>20 calculation as of September 19, 2008, or did you</p> <p>21 independently decide that that was the relevant</p> <p>22 date for a calculation?</p> <p>23 MR. OXFORD: Objection to the form.</p> <p>24 That misstates the facts and the evidence,</p> <p>25 and I think you're misreading his reports.</p>

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<p>1 D. McIsaac 2 You can answer if you can. 3 A. I believe the 19th of September 2008 4 was the last reserve requirement prepared by 5 Lehman prior to entering into SIPC protection. 6 Q. Okay. Do you know the date that LBI 7 entered into SIPC protection? 8 A. I believe it was sometime on or about 9 the 19th of September. 10 Q. Okay. Do you know if they had 11 performed a calculation on that date prior to 12 entering into SIPC liquidation? 13 MR. OXFORD: Objection to form. 14 A. I have not seen any as of September 15 18, I don't believe. 16 Q. Have you seen any as of the morning of 17 September 19? 18 A. I'm sorry, as of the morning of 19 September 19th? As of what period of time? 20 Q. Prior to entering into liquidation on 21 the day of the 19th? 22 A. Based on what period? Based on what 23 ending period? 24 Q. Any ending period. 25 A. You can only do it at the end of a</p>	<p>1 D. McIsaac 2 day. You can't do it in the middle of a day. 3 Q. Okay. So then wasn't the last 4 calculation actually performed by LBI prior to 5 entering into liquidation done on the 17th? 6 A. I don't think so. I thought they were 7 required to do a calculation as of the close of 8 business on the 19th. 9 Q. Even if they were no longer in 10 business? 11 A. I don't know what the whole rule is 12 around SIPC, but I believe they were required to 13 do a calculation as of the close of business the 14 19th because that was the last day of business. 15 Q. Could you show me in -- we can get you 16 Rule 15c3-3. We're going to mark that as 17 Exhibit 694. 18 (Exhibit 694, Rule 15c3-3, marked for 19 identification, as of this date.) 20 Q. I've put before you SEC Rule 15c3-3. 21 Could you tell me where in Rule 15c3-3 LBI would 22 have been required to do a reserve calculation 23 on the 19th despite entering into liquidation on 24 that day? 25 MR. OXFORD: Objection. Form.</p>
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<p>1 D. McIsaac 2 Misstates the witness's testimony. 3 You can answer. 4 A. I don't think there's anything in Rule 5 15c3-3 that says when anybody is supposed to do 6 a calculation as opposed to the 19th. I believe 7 it says that you do calculations as of Friday 8 and the last business day of the month. 9 Q. Okay. 10 A. That was their last business day. 11 Q. Is it your position that 15c3-3 12 continues to apply after entering into SIPC 13 liquidation? 14 A. I would think you would have to do a 15 final calc if it was a Friday close of business 16 to account for all your assets in this process. 17 Q. And the basis for that belief is? 18 A. The last day of business was a Friday. 19 I don't know if you would have to do it if the 20 last day of business was a Wednesday, but their 21 last day of business was a Friday. 22 Q. So it's your position that even though 23 at the end of the day of business on that Friday 24 they were in liquidation, they still would have 25 had to do a 15c3-3 calculation?</p>	<p>1 D. McIsaac 2 A. I believe so. That's my opinion. 3 Q. Okay. And that is based on? 4 A. You're supposed to do calculations as 5 of Friday or month end, and that was a Friday of 6 business. 7 Q. So you have no other basis for your 8 opinion that a 15c3-3 calculation would have 9 been required even though they had entered into 10 liquidation on that day? 11 A. I believe the SEC required a 3-3 12 calculation to be done, but I don't know if I 13 can point to anything that says that. 14 Q. When you say the SEC required it, do 15 you mean by rule or are you talking about events 16 as of that day, communications that day? 17 A. I thought by rule they required it as 18 of the close of business on Friday. I think 19 they -- did they go into -- I believe they went 20 into liquidation after the markets closed, which 21 would be the close of their business day. 22 Q. And if that were not the case, would 23 that change your opinion in any way? 24 A. Then I would leave it up to the 25 regulators to determine if a calculation had to</p>

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<p>1 D. McIsaac 2 be done at that point in time. 3 Q. So you don't have an opinion, then, if 4 the liquidation started prior to the close of 5 business on Friday? 6 A. If the -- 7 MR. OXFORD: Objection. Form. 8 You can answer. 9 A. If the liquidation was at 1 o'clock -- 10 9 o'clock in the morning, I might have a 11 different opinion, but it was I believe after 12 the close of business. I think it was finally 13 approved sometime Saturday morning. 14 Q. Okay. 15 A. And I'm assuming -- 16 Q. I'm trying to make sure you've 17 answered my question. I don't think we've 18 established what time it was. 19 If it did happen prior to the close of 20 business, does that change your opinion? 21 MR. OXFORD: Objection. Form. 22 You can answer. 23 A. I don't know. I don't have an opinion 24 on it. 25 Q. Okay. Now, under -- for a moment</p>	<p>1 D. McIsaac 2 we'll assume that the 19th is the appropriate 3 date, and I believe you said that under the 4 SEC -- well, rather than recharacterize your 5 testimony, how often does an operating 6 broker-dealer have to do its reserve 7 calculation? 8 A. It's based on what type of 9 broker-dealer it is. One of Lehman's stature 10 had to do one weekly and as of month end. 11 Q. And you said normally it was done on 12 Friday afternoons, correct? 13 A. As of close of business Friday and as 14 of month end. 15 Q. Okay. Now, if a calculation done on 16 the -- done as of the close of business on 17 Friday showed a shortfall, at what time would 18 the broker-dealer be required to make up the 19 shortfall? 20 A. 10 A.M. the second business day 21 following the day of closing. So on a Friday, 22 as long as Monday was a business day, 10 o'clock 23 Tuesday. 24 Q. Okay. And that's under Rule 15c3-3 as 25 well?</p>
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<p>1 D. McIsaac 2 A. Yes. 3 Q. Now, in this case, Lehman was no 4 longer operating as of 10 A.M. the following 5 Tuesday morning, correct? 6 A. I believe that's the case. 7 Q. So as of Friday, the 19th, it would 8 not have had an obligation to actually deposit a 9 shortfall into the account? 10 A. I believe -- 11 MR. OXFORD: Objection to form. 12 You can answer. 13 A. I believe Lehman was still a 14 broker-dealer and had not issued a BDW as of 15 that point in time. 16 Q. I'm sorry, what is a BDW? 17 A. Withdrawal as a broker-dealer. 18 Q. Okay. So is it your testimony that 19 even after filing for liquidation LBI was an 20 operating broker-dealer? 21 A. No. I'm saying they didn't file a BDW 22 and still would have been, I think, required to 23 make a deposit on Tuesday morning if they had to 24 add to their deposit. 25 Q. Despite the fact that a Trustee had</p>	<p>1 D. McIsaac 2 been appointed and was running the operations? 3 A. (Witness nods.) 4 Yes, I'm sorry. 5 Q. You do need to answer. 6 A. I know that. 7 Q. Could you show me or could you tell me 8 what the source of your opinion on that is? 9 A. I don't think there's anything in the 10 literature that says that. I don't think 11 there's anything in the literature that points 12 to a broker-dealer going out of business on a 13 Friday and whether or not it has to make its 14 deposit on Tuesday. 15 Q. So you're not basing your opinion on 16 anything? 17 A. Just -- 18 MR. OXFORD: Objection. Form. It's 19 not what the witness said. 20 But you can answer. 21 A. Practice, common practice, and I would 22 think they would do their last computation. 23 Q. You say common practice. How often 24 have you been involved in a broker-dealer that 25 has gone into liquidation?</p>

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<p>1 D. McIsaac</p> <p>2 A. Never.</p> <p>3 Q. Okay. Let's turn to the discussion of</p> <p>4 FID accounts, and in your original report that</p> <p>5 was at paragraphs -- I didn't put it down</p> <p>6 here -- it starts on page 13 of your original</p> <p>7 report. It's relating to Fixed Income Division</p> <p>8 prime broker clients that are being referred to</p> <p>9 as FID accounts?</p> <p>10 A. That's correct.</p> <p>11 Q. In your original report you stated</p> <p>12 that securities had been liquidated by Chase, is</p> <p>13 that correct?</p> <p>14 A. That's correct.</p> <p>15 Q. And you decided that was an error for</p> <p>16 your rebuttal report; is that correct?</p> <p>17 A. No, for my additional affidavit that</p> <p>18 was put in.</p> <p>19 Q. Okay. I apologize. But your opinion</p> <p>20 on that has changed?</p> <p>21 A. That's correct.</p> <p>22 Q. Okay. Now, from where did you get the</p> <p>23 number of 891 million as being the -- yes, as</p> <p>24 being the relevant number? And for reference,</p> <p>25 that would be in paragraph 35 of your original</p>	<p>1 D. McIsaac</p> <p>2 affidavit.</p> <p>3 A. That's a combination of the 630</p> <p>4 million of assets and the 281 million -- \$258</p> <p>5 million of the cash.</p> <p>6 Q. Okay. Well, I'm not seeing citations</p> <p>7 for either the 630 million number or the 258</p> <p>8 million number. So where did you get those</p> <p>9 numbers?</p> <p>10 A. They were provided to me by the</p> <p>11 Trustee's financial advisor.</p> <p>12 Q. Did you do any independent</p> <p>13 investigation of the accuracy of those numbers?</p> <p>14 A. I reviewed some documents that would</p> <p>15 have shown the numbers there, would have shown</p> <p>16 the accounts with the balances in them and the</p> <p>17 asset value.</p> <p>18 Q. Are those documents attached to your</p> <p>19 affidavit?</p> <p>20 A. I don't know if they are or not. I</p> <p>21 don't think so.</p> <p>22 Q. Did you speak to anybody about the</p> <p>23 accuracy of those numbers?</p> <p>24 A. The Trustee and their financial</p> <p>25 advisors.</p>
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<p>1 D. McIsaac</p> <p>2 Q. By "financial advisors" are you</p> <p>3 referring to legal counsel again?</p> <p>4 A. It would have been legal counsel</p> <p>5 and/or their financial advisors, Deloitte.</p> <p>6 Q. Deloitte. Can you tell me who you</p> <p>7 spoke to at Deloitte?</p> <p>8 A. Chris Harris and Marlo Karp.</p> <p>9 I'm sorry, I didn't know if that was</p> <p>10 privileged.</p> <p>11 MR. OXFORD: If I might, let me</p> <p>12 perhaps make this go a little more smoothly.</p> <p>13 To the extent, Mr. McIsaac, you relied upon</p> <p>14 advice from Deloitte -- or, not advice, you</p> <p>15 relied on information as a source of the</p> <p>16 facts upon which you base your opinion</p> <p>17 whether in your original affidavit or</p> <p>18 supplemental affidavit or your rebuttal</p> <p>19 report, then I think it's fine for you to</p> <p>20 answer those questions.</p> <p>21 To the extent Ms. Neuhardt's questions</p> <p>22 call for discussions with Deloitte or any</p> <p>23 other person that you did not rely on as a</p> <p>24 source of information for the opinions</p> <p>25 expressed in these affidavits and reports,</p>	<p>1 D. McIsaac</p> <p>2 then I will instruct you not to answer that</p> <p>3 question.</p> <p>4 THE WITNESS: Okay. Thank you.</p> <p>5 Q. I'm trying to find out the underlying</p> <p>6 source of the facts underneath your report.</p> <p>7 A. It would have been either Chris Harris</p> <p>8 or Marlo Karp.</p> <p>9 Q. Did you speak to any employees of the</p> <p>10 Trustee?</p> <p>11 A. No, I did not. Well, employees of the</p> <p>12 Trustee? Legal counsel?</p> <p>13 Q. No.</p> <p>14 MR. OXFORD: Maybe we can clear things</p> <p>15 up. Does your question, Amy, go to the --</p> <p>16 MS. NEUHARDT: I'm going to the TSA</p> <p>17 employees, basically.</p> <p>18 MR. OXFORD: Okay. Because that's</p> <p>19 different than they're not employees of the</p> <p>20 trustee.</p> <p>21 MS. NEUHARDT: But they're performing</p> <p>22 services for him.</p> <p>23 MR. OXFORD: Sure. Maybe we can ask</p> <p>24 this again and make sure Mr. McIsaac</p> <p>25 understands the question.</p>

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<p>1 D. McIsaac</p> <p>2 Q. Are you aware that there are persons</p> <p>3 who are normally employed by Barclays who work</p> <p>4 entirely at the direction of the Trustee?</p> <p>5 MR. OXFORD: Objection.</p> <p>6 A. I'm aware that there are employees of</p> <p>7 Barclays doing work under a TSA. I don't know</p> <p>8 what they're doing or who they are.</p> <p>9 Q. When you say "TSA," what are you</p> <p>10 referring to?</p> <p>11 A. Some kind of transfer services</p> <p>12 agreement I believe is what it's call in the</p> <p>13 industry.</p> <p>14 Q. Do you understand that those employees</p> <p>15 are working for the Trustee?</p> <p>16 A. I don't know who they're working for.</p> <p>17 Q. Okay. Did you speak to any of those</p> <p>18 individuals in relation to the FID accounts?</p> <p>19 A. No.</p> <p>20 Q. Did you speak to any of those</p> <p>21 individuals in relation to anything in your</p> <p>22 reports?</p> <p>23 A. No.</p> <p>24 Q. How did you determine that the \$891</p> <p>25 million were customer assets?</p>	<p>1 D. McIsaac</p> <p>2 A. They were assets in the customer</p> <p>3 accounts that went -- that went into a -- an</p> <p>4 account at Chase designated for the benefit of</p> <p>5 customers.</p> <p>6 Q. What I'm trying to understand is what</p> <p>7 the source is for your statement that they were</p> <p>8 assets in the customer accounts.</p> <p>9 A. I received a document that listed the</p> <p>10 accounts and the account -- the accounts and the</p> <p>11 money, monetary value and the security market</p> <p>12 value in those accounts.</p> <p>13 Q. Did you do any independent</p> <p>14 investigation of the accuracy of that document?</p> <p>15 A. No, I did not. I believe I reviewed</p> <p>16 the stipulation agreement that might have also</p> <p>17 included information on those accounts.</p> <p>18 Q. Is that stipulation agreement attached</p> <p>19 to your report?</p> <p>20 A. I don't believe it is.</p> <p>21 Q. Sorry?</p> <p>22 A. No. No.</p> <p>23 MR. OXFORD: Just to move this along,</p> <p>24 Amy, are you referring to any report or a</p> <p>25 specific report?</p>
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<p>1 D. McIsaac</p> <p>2 MS. NEUHARDT: He said that there's a</p> <p>3 document he looked at that helped him</p> <p>4 determine whether or not the assets that he</p> <p>5 described in his report as FID assets --</p> <p>6 that he describes as customer assets, he</p> <p>7 said he looked at a document and that told</p> <p>8 him they were customer assets. And then I</p> <p>9 asked if he did any independent</p> <p>10 investigation, and he first said no, but</p> <p>11 then he said he may have looked at a</p> <p>12 stipulation, and I asked whether or not he</p> <p>13 attached that in his report.</p> <p>14 MR. OXFORD: Okay. Just for ease, I</p> <p>15 can represent that it's been produced to you</p> <p>16 and I believe it actually may be attached to</p> <p>17 his report, but I'll --</p> <p>18 A. Yes, you say reports. I'm not sure</p> <p>19 which report. I don't think it's in the --</p> <p>20 Q. When I say report, either any of the</p> <p>21 three reports sitting in front of you -- I guess</p> <p>22 it's two reports and one supplemental affidavit.</p> <p>23 And what was your source for stating</p> <p>24 that these particular assets were seized?</p> <p>25 A. Chase took control of the assets and</p>	<p>1 D. McIsaac</p> <p>2 did not return them to the Trustee.</p> <p>3 Q. What's your source for that?</p> <p>4 A. The documents that were provided to me</p> <p>5 by the financial.</p> <p>6 Q. On this one I'm going to need you to</p> <p>7 show me which documents. If you could look at</p> <p>8 your report and show me which documents you're</p> <p>9 using to rely on for the prospect that they were</p> <p>10 seized. I understand, but I need you to</p> <p>11 identify what you're relying on for that. So --</p> <p>12 A. I have a list of assets. I don't</p> <p>13 believe I have any -- anything -- I don't think</p> <p>14 it's in my documents. I can look for you to see</p> <p>15 in the extra documents if we provided anything</p> <p>16 from Chase showing that they were moved out of</p> <p>17 Chase's account. I believe somewhere in here we</p> <p>18 have the accounts showing zero balances in them.</p> <p>19 Q. Do you know what day they were seized</p> <p>20 if in fact they were seized?</p> <p>21 A. Chase, from my understanding, on or</p> <p>22 about the 18th of September --</p> <p>23 Q. On the 18th?</p> <p>24 A. I'm not finished.</p> <p>25 -- shut off access to Lehman to have</p>

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<p>1 D. McIsaac</p> <p>2 access to the accounts. Somewhere along that</p> <p>3 period of time, the assets were taken out of the</p> <p>4 accounts of Lehman.</p> <p>5 Q. So when you say shut off access,</p> <p>6 you're referring to shutting off electronic</p> <p>7 ability to monitor --</p> <p>8 A. Yes.</p> <p>9 Q. -- the accounts?</p> <p>10 A. The screens were shut off.</p> <p>11 Q. Are you equating that to seizure?</p> <p>12 A. No. I'm just saying that at that</p> <p>13 point in time, LBI was not aware of what was in</p> <p>14 the accounts.</p> <p>15 Q. Okay. But do you know when the assets</p> <p>16 were actually seized?</p> <p>17 A. I believe the reports that came from</p> <p>18 Chase, and I'm looking for them in here because</p> <p>19 I believe they're in here, showed that, as of</p> <p>20 the 19th, they were removed from the accounts.</p> <p>21 Q. Do you know if it was before or after</p> <p>22 LBI filed for liquidation -- sorry, filed for</p> <p>23 SIPC protection?</p> <p>24 A. I don't believe Chase put a time stamp</p> <p>25 on when they removed them out of the accounts.</p>	<p>1 D. McIsaac</p> <p>2 Q. So you don't know one way or the</p> <p>3 other?</p> <p>4 A. I'm not sure what the relevance would</p> <p>5 be of that if they had no access to those assets</p> <p>6 as of the 19th.</p> <p>7 Q. Well, again, are you equating the</p> <p>8 inability to monitor the accounts with seizure?</p> <p>9 A. No, I'm saying that they didn't know</p> <p>10 if they had them or not had them at the 19th</p> <p>11 because they had no access to their accounts.</p> <p>12 Q. Are you saying that the inability to</p> <p>13 monitor alone would make it no longer a good</p> <p>14 control location?</p> <p>15 A. No, I just said that they wouldn't</p> <p>16 have known at that point in time if they were in</p> <p>17 the accounts or not.</p> <p>18 Q. So the mere fact that they could not</p> <p>19 monitor would not have turned those accounts</p> <p>20 into a -- strike that.</p> <p>21 MR. OXFORD: And Amy, just on the</p> <p>22 seize question, maybe we could add that to</p> <p>23 the list of things you want Mr. McIsaac to</p> <p>24 look at at a break and it'll speed things up</p> <p>25 a little bit.</p>
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<p>1 D. McIsaac</p> <p>2 MS. NEUHARDT: Uh-huh.</p> <p>3 Q. Is electronic access required to be a</p> <p>4 good control location under 15c3-3?</p> <p>5 A. No.</p> <p>6 Q. Okay. So it's the seizure that is</p> <p>7 critical to your opinion on this?</p> <p>8 A. Yes.</p> <p>9 Q. But you do not know at what time on</p> <p>10 the 19th these assets were seized?</p> <p>11 A. No, I do not.</p> <p>12 Q. Okay. Now, what are the requirements</p> <p>13 of a good control location under 15c3-3?</p> <p>14 A. You should have a letter from the</p> <p>15 bank.</p> <p>16 Q. A "no lien letter"?</p> <p>17 A. Stating they have no liens on those</p> <p>18 assets.</p> <p>19 Q. Are there any other requirements?</p> <p>20 A. I believe that the language in the</p> <p>21 letter talks to no lien, except for payment of</p> <p>22 certain fees and that.</p> <p>23 Q. Now, do you know if there was a "no</p> <p>24 lien letter" from Chase with regards to these</p> <p>25 accounts?</p>	<p>1 D. McIsaac</p> <p>2 A. I believe there were "no lien letters"</p> <p>3 from Chase with these accounts.</p> <p>4 Q. Were they revoked on or before the</p> <p>5 19th?</p> <p>6 A. I believe there was certain ambiguity</p> <p>7 on whether or not those accounts were being used</p> <p>8 by Chase for credit purposes or reviewing the</p> <p>9 equity of LBI at points in time throughout the</p> <p>10 year.</p> <p>11 Q. I don't think that answers my</p> <p>12 question. Do you know if the "no lien letters"</p> <p>13 were revoked on or before the 19th?</p> <p>14 A. I do not know if they were revoked</p> <p>15 before.</p> <p>16 Q. Okay. Now, you refer in your report</p> <p>17 regarding the FID assets to an overdraft notice;</p> <p>18 is that correct?</p> <p>19 A. Which report are we talking about now?</p> <p>20 Q. Both of them, actually. I'm still</p> <p>21 just talking about the FID reports.</p> <p>22 A. Uh-huh.</p> <p>23 Q. Did you -- did you review the</p> <p>24 overdraft notice?</p> <p>25 A. I've seen documentation that showed</p>

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<p>1 D. McIsaac 2 that it was an overdraft at Chase. 3 Q. Did you do any investigation into -- 4 did you do any investigation into whether or not 5 the notice was properly issued? 6 A. No. 7 Q. Okay. And did you inquire -- 8 A. I -- 9 Q. Sorry? 10 A. I said, no, I don't know what notice 11 of properly issued would be in an overdraft 12 account. Usually you would get a statement from 13 the bank or you would see it online. I don't 14 know if that constitutes a notice. 15 Q. Did you do any investigation into 16 whether or not Chase had acknowledged to Lehman 17 on the 19th that the notice was improperly 18 issued? 19 A. What notice now? 20 Q. You told me you reviewed an overdraft 21 notice. 22 A. And did Chase say that it was 23 improperly issued? No. 24 Q. I'm asking if you investigated whether 25 or not that occurred?</p>	<p>1 D. McIsaac 2 A. I did not. 3 Q. Okay. If that in fact occurred, would 4 that change your opinion in any way? 5 MR. OXFORD: Objection to the form. 6 Assumes facts not in evidence. 7 MS. NEUHARDT: I'm sorry, I couldn't 8 hear you. 9 MR. OXFORD: You can answer. 10 A. If Chase sent another report to Lehman 11 at that time saying we originally told you you 12 had an overdraft of 20 billion, we were wrong, 13 you have cash of 10 billion, yes, that would 14 have an impact on what I thought. If that's 15 what your question was. 16 Q. That's not my question. My question 17 is whether if Chase informed people at Lehman 18 that the notice was issued as a mistake, would 19 that change your opinion? 20 MR. OXFORD: Same objection. 21 A. If they said that -- if they gave 22 notice that there was no overdraft and the 23 assets weren't used to secure the overdraft, 24 yes, it would change my opinion. 25 Q. Did you make any effort to determine</p>
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<p>1 D. McIsaac 2 whether or not LBI actually attempted to 3 withdraw any money from the Chase account on 4 Friday, September 19? 5 A. No, I did not. 6 Q. Did you make any efforts to determine 7 whether or not LBI actually attempted to 8 withdraw any securities from the Chase account 9 as of September 19? 10 A. As I'm aware, the screens were shut 11 down, so I don't know how they would have done 12 that without electronically notifying, unless 13 they would have done it via overnight letting 14 Chase know what deliveries and receipts to make, 15 but I did not do any inquiries into that. 16 Q. Are you saying that telephone 17 communications no longer work? 18 A. I don't know if anybody made a 19 telephone communication to them. I know the 20 screens were down and that's the normal mode of 21 moving securities. 22 Q. So you don't actually know whether or 23 not LBI could have had access to that -- to the 24 cash and securities in the Chase accounts on 25 September 19, 2008?</p>	<p>1 D. McIsaac 2 MR. OXFORD: Objection to form. 3 A. I've been informed that the screens 4 were shut down. So having access to it other 5 than via the screens, I'm not sure how they 6 would have it other than maybe verbal 7 discussions with Chase. 8 Q. The mere fact that the screens were 9 shut down would not substantively affect their 10 ability to withdraw money; is that correct? 11 MR. OXFORD: Objection. Form. 12 A. I assume they could send instructions 13 to Chase to do it, and if Chase so desired, they 14 could follow that. 15 Q. Okay. If Chase in fact actually 16 seized assets on the 19th, would that have 17 affected the reserve calculation done by LBI on 18 the 17th? 19 A. If there was ambiguity or if the "no 20 lien" language for those accounts was not in 21 force, then yes, that would have affected any 22 other calculation done at that point in time. 23 Q. Have you seen any evidence that the 24 "no lien letter" was not enforced as of the 25 17th?</p>

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<p>1 D. McIsaac</p> <p>2 A. I have seen nothing that said they --</p> <p>3 it was not enforced at that time.</p> <p>4 Q. Would your answer be the same as of</p> <p>5 the 12th?</p> <p>6 A. The same. I have seen nothing before</p> <p>7 that time.</p> <p>8 Q. Okay. Now, if there were -- if these</p> <p>9 assets were seized on the 19th and it did cause</p> <p>10 a need to adjust the amount in the reserve</p> <p>11 account, at what time -- when would that deposit</p> <p>12 be required?</p> <p>13 A. I believe I answered that before. 10</p> <p>14 A.M. Tuesday morning, if that deposit was</p> <p>15 required.</p> <p>16 Q. Okay. Could you just tell me which</p> <p>17 regulation it is that would require a credit in</p> <p>18 the reserve formula for the seizure of assets on</p> <p>19 the 19th?</p> <p>20 A. I believe the credit goes into the</p> <p>21 reserve formula because you would have customer</p> <p>22 assets allocating to a loan.</p> <p>23 Q. Okay.</p> <p>24 A. A bank loan.</p> <p>25 Q. Is that in 15c3-3?</p>	<p>1 D. McIsaac</p> <p>2 A. Yes, it is.</p> <p>3 Q. Could you show me where in this</p> <p>4 exhibit?</p> <p>5 A. Could you give me the interpretation</p> <p>6 memos? It would be a lot easier to find it.</p> <p>7 Q. Absolutely. Yes. That would be in</p> <p>8 Exhibit 695.</p> <p>9 (Exhibit 695, Customer Protection -</p> <p>10 Reserves and Custody of Securities SEA Rule</p> <p>11 15c3-3, marked for identification, as of</p> <p>12 this date.)</p> <p>13 A. I believe it's on page 2625 of the</p> <p>14 FINRA Interpretation Handbook.</p> <p>15 Q. Okay. What portion of this on page</p> <p>16 2625?</p> <p>17 A. It says "Proprietary Bank Loans versus</p> <p>18 Customer Account Long."</p> <p>19 Q. Okay. Do you rely on anything else</p> <p>20 for your opinion that if there were assets</p> <p>21 seized, there would have to be a credit to the</p> <p>22 reserve calculation?</p> <p>23 A. I believe there are other portions</p> <p>24 within here that talk about the same thing --</p> <p>25 Q. This is the proprietary source?</p>
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<p>1 D. McIsaac</p> <p>2 A. Customer property allocating to</p> <p>3 proprietary bank loan.</p> <p>4 Q. Okay. Now, I'm going to move on to</p> <p>5 coding errors. Your rebuttal report discusses</p> <p>6 two alleged coding errors: One regarding the</p> <p>7 classification of Woodlands Bank as a customer</p> <p>8 or non-customer?</p> <p>9 A. Right.</p> <p>10 Q. And another relating to an error in</p> <p>11 the ADP system; is that correct?</p> <p>12 A. Correct.</p> <p>13 Q. Are you aware of any other alleged</p> <p>14 coding errors that would have affected the</p> <p>15 credit side of LBI's reserve calculation as of</p> <p>16 September 19, 2008?</p> <p>17 A. The ADP -- there were two instances of</p> <p>18 a ADP. It was certain accounts were not -- were</p> <p>19 picked up as customers. They should have been</p> <p>20 non-customer, as well as the allocation. But</p> <p>21 they're both this here.</p> <p>22 Q. So there's nothing other than what is</p> <p>23 discussed in your reports in the way of coding</p> <p>24 errors that you have identified?</p> <p>25 A. That I am aware of at this time, no.</p>	<p>1 D. McIsaac</p> <p>2 Q. Were you asked by the Trustee to</p> <p>3 identify transactions or events that might have</p> <p>4 required adjustments on the debit side of the</p> <p>5 reserve calculation?</p> <p>6 A. All issues brought to my attention by</p> <p>7 the Trustee would have been reviewed. There was</p> <p>8 no indication of only reviewing the credit side.</p> <p>9 In fact, the coding errors did have an impact on</p> <p>10 both the debit and credit side.</p> <p>11 Q. Okay. Did you make any independent</p> <p>12 effort to look for transactions or events that</p> <p>13 would have required an adjustment to the reserve</p> <p>14 calculation other than what was identified by</p> <p>15 the Trustee for you?</p> <p>16 A. Nothing else was brought to my</p> <p>17 attention that would have required that.</p> <p>18 Q. I understand. Did you make any</p> <p>19 independent effort to look for additional</p> <p>20 transactions or events?</p> <p>21 A. I did not.</p> <p>22 Q. Do you know if the Trustee looked for</p> <p>23 errors that would have caused an adjustment on</p> <p>24 the debit side of the reserve formula?</p> <p>25 A. I believe the Trustee and their</p>

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<p>1 D. McIsaac</p> <p>2 advisors looked for all and any adjustments that</p> <p>3 would have impacted the 9/19 calculation.</p> <p>4 Q. Do you know if the Trustee and its</p> <p>5 advisors have completed its -- their analysis of</p> <p>6 any and all adjustments that would have impacted</p> <p>7 the 9/19 calculation?</p> <p>8 A. I believe the Trustee and their</p> <p>9 advisors are still researching facts and figures</p> <p>10 as of the 19th of September, and if anything was</p> <p>11 to come to their attention, I believe they would</p> <p>12 bring it up at that point in time. It was my</p> <p>13 understanding as of the time I filed the</p> <p>14 rebuttal report that no additional items have</p> <p>15 been found.</p> <p>16 Q. So you believe the analysis is still</p> <p>17 ongoing?</p> <p>18 A. I believe it's still in process, yes.</p> <p>19 Q. But you do believe that the Trustee</p> <p>20 and its financial advisors have engaged in the</p> <p>21 process?</p> <p>22 MR. OXFORD: Objection. Form.</p> <p>23 Q. Do you understand the question?</p> <p>24 A. I don't know what process you're</p> <p>25 talking about they engaged in.</p>	<p>1 D. McIsaac</p> <p>2 Q. The process of identifying -- the</p> <p>3 process of identifying any and all adjustments</p> <p>4 that would have impacted the 9/19 calculation?</p> <p>5 A. I believe they're still doing work as</p> <p>6 it relates to 9/19, and as I said in my rebuttal</p> <p>7 report, I don't think anything came to their</p> <p>8 attention by the time I filed that report.</p> <p>9 Q. Okay. In paragraph 16 of your</p> <p>10 rebuttal report, you say that the Woodland</p> <p>11 assets had actually been seized. What did you</p> <p>12 base that on?</p> <p>13 A. They were part of the assets that were</p> <p>14 in the free box that was taken by Chase.</p> <p>15 Q. So it's the same Chase matter as we've</p> <p>16 already discussed?</p> <p>17 A. No. These were never locked up in a</p> <p>18 seg account because the account was coded as a</p> <p>19 non-customer, not a customer.</p> <p>20 Q. On what day do you believe these were</p> <p>21 seized?</p> <p>22 A. When Chase seized all the assets</p> <p>23 versus the bank loan, which I assume was the</p> <p>24 19th.</p> <p>25 Q. Which you assume was the 19th?</p>
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<p>1 D. McIsaac</p> <p>2 A. Yes.</p> <p>3 Q. Okay. In rebuttal paragraph 18, this</p> <p>4 is referring to I believe the ADP Broadridge</p> <p>5 issue?</p> <p>6 A. Uh-huh.</p> <p>7 Q. You say that, "As part of a review</p> <p>8 performed by Barclays," and you emphasize "by</p> <p>9 Barclays," "at the request of the S.E.C.,</p> <p>10 Barclays performed a partial recalculation of</p> <p>11 the reserve formula to adjust for these known</p> <p>12 discrepancies which revealed, as a result of the</p> <p>13 coding errors, a \$213 million shortfall."</p> <p>14 And I -- you can turn to Exhibit 8 if</p> <p>15 you want, that's what you cite, but I'd like to</p> <p>16 know what your basis is for saying that Barclays</p> <p>17 did a recalculation --</p> <p>18 A. I believe Barclays employees were the</p> <p>19 ones sending the information to ADP and</p> <p>20 requesting that a recalculation was done.</p> <p>21 Q. Okay. And do you know whether those</p> <p>22 Barclays employees were Barclays employees</p> <p>23 performing work for the Trustee under the TSA?</p> <p>24 A. I don't know in what capacity, but the</p> <p>25 letterhead on the note to ADP at Broadridge was</p>	<p>1 D. McIsaac</p> <p>2 Barclays.</p> <p>3 Q. I'm going to mark as Exhibit 696 a</p> <p>4 declaration of Robert Martini dated April 5,</p> <p>5 2010, and after she hands it to you my first</p> <p>6 question will be have you seen it before.</p> <p>7 (Exhibit 696, Declaration of Robert</p> <p>8 Martini, marked for identification, as of</p> <p>9 this date.)</p> <p>10 A. No, I have not.</p> <p>11 Q. Would you read paragraphs 5 through 7?</p> <p>12 Let me know when you're through.</p> <p>13 (Document review.)</p> <p>14 A. I've read it. I'm sorry, 5 through 7?</p> <p>15 Okay.</p> <p>16 Q. Okay. Assuming that what Mr. Martini</p> <p>17 says in his declaration is true, would that</p> <p>18 change your opinion that Barclays performed a</p> <p>19 recalculation of the reserve formula as set</p> <p>20 forth in paragraph 18 of your rebuttal report?</p> <p>21 A. I saw a letter going from Barclays to</p> <p>22 Broadridge directing them to make the changes.</p> <p>23 They did all the research and directed them to</p> <p>24 make the changes. Whether the employees who</p> <p>25 actually did the calculation were TSA employees</p>

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<p>1 D. McIsaac 2 or Barclays employees I do not know. I don't 3 have the name of the employee who did it. 4 Q. Okay. Did you speak to any of the 5 employees on that letter? 6 A. No, I did not. 7 Q. Okay. Do you know if the 8 recalculation that is discussed in paragraph 18 9 of your Rebuttal Report was a complete 10 recalculation of the 15c3-3 requirement as of 11 9/19 or just an adjustment for the ADP 12 Broadridge issue? 13 A. I believe I said in here it was just 14 an adjustment for the ADP Broadridge as well as 15 the clarification of the 944 accounts. 16 Q. By the 944 accounts, you're referring 17 to the Woodland Bank? 18 A. No. 19 Q. No. What are you referring to? 20 A. 944 accounts were other accounts 21 classified as customers that should have been 22 reclassified as non-customer. 23 MS. NEUHARDT: I'm probably at a 24 halfway point if you want to take a short 25 break.</p>	<p>1 D. McIsaac 2 MR. OXFORD: Okay. That would be 3 great. 4 MS. NEUHARDT: There were two 5 things we wanted him to look for. 6 Let's go off the record. 7 THE VIDEOGRAPHER: The time is 5:54. 8 This is the end of the tape labeled number 9 6. We're going off the record. 10 (Recess.) 11 THE VIDEOGRAPHER: This is the start 12 of tape labeled number 7. The time is 6:23. 13 We are back on the record. 14 MS. NEUHARDT: Mr. Oxford, based on 15 our conversation off the record, you have 16 some statements to put on the record about 17 what Mr. McIsaac found during the break? 18 MR. OXFORD: Yes. Mr. McIsaac, you 19 had referenced a stipulation in response to 20 some questions that Amy asked you in 21 connection with the FID issue? 22 THE WITNESS: Right. 23 MR. OXFORD: Could you turn to your 24 Rebuttal Report, Exhibit 1, please. 25 THE WITNESS: Right.</p>
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<p>1 D. McIsaac 2 MR. OXFORD: Can you identify what 3 Exhibit 1, please? 4 THE WITNESS: The substitution 5 agreement. I apologize for calling it a 6 stipulation. Agreement. 7 MR. OXFORD: Is that the document you 8 referred to when you were talking about the 9 stipulation? 10 THE WITNESS: Yes, it was. 11 MR. OXFORD: And can you also identify 12 for me what Exhibit 2 is to your Rebuttal 13 Report? 14 THE WITNESS: Exhibit 2 is the summary 15 by account of all of the FID accounts and 16 the assets that they had in their accounts 17 as of the 19th of September. 18 MR. OXFORD: Okay. Thank you. And 19 then the other issue that I just wanted to 20 clear up, if you could turn to your original 21 affidavit, which is Exhibit 691. 22 THE WITNESS: Right, those were in 23 693. 24 MR. OXFORD: Yes. And these are not 25 tabbed, but I'd like you to find Exhibit 28,</p>	<p>1 D. McIsaac 2 if you could. 3 THE WITNESS: So much easier if it was 4 tabbed. 5 MS. NEUHARDT: It's been discussed. 6 THE WITNESS: Okay, yes. 7 MR. OXFORD: Do you have Exhibit 28 in 8 front of you, sir? 9 THE WITNESS: Yes, I do. 10 MR. OXFORD: Was that the memorandum 11 you referred to in your earlier testimony 12 that was from Barclays Capital to 13 Broadridge? 14 THE WITNESS: Right. This was the 15 memo that went from Barclays to Broadridge 16 Capital. 17 MR. OXFORD: Is it your understanding 18 this was an analysis or review that was 19 conducted by these individuals on behalf of 20 LBI or Barclays Capital? 21 THE WITNESS: I believe they were 22 Barclays Capital employees. They reviewed 23 LBI and I think at the same time they 24 conducted a similar review of Barclays 25 Capital reports to determine whether or not</p>

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<p>1 D. McIsaac 2 they were the same issue in the ADP or 3 Broadridge allocation matrix. 4 MR. OXFORD: Okay. Thank you. 5 MS. NEUHARDT: Neil, I believe you 6 also said that you would provide for us -- 7 you would review and identify for us the 8 materials on which you relied for his 9 testimony that the total amount of cash and 10 securities in the reserve account as of 9/19 11 was roughly 1.769 billion; is that correct? 12 MR. OXFORD: Yes, we will undertake to 13 do that. 14 MS. NEUHARDT: And that you would do 15 the same for Mr. McIsaac's testimony that 16 the assets at Chase were seized on September 17 19, 2008? 18 MR. OXFORD: Yes. Again, we'll 19 undertake to review the reliance materials 20 that were produced to you. 21 BY MS. NEUHARDT: 22 Q. Do you still have your report opened 23 to Exhibit 28, which we were just discussing? 24 A. I found it very quick. 25 Q. Is it your testimony that this is</p>	<p>1 D. McIsaac 2 your -- is the basis for your statement in 3 paragraph 18 of your rebuttal that Barclays 4 performed a partial recalculation of the reserve 5 formula to adjust for the discrepancies 6 discussed in this portion of your rebuttal 7 report? 8 A. Yes, I believe on or about January 9 2009, the allocation report was rerun and the 10 adjustments were made to it. 11 Q. But your basis for that statement, 12 that it was rerun in January, is not this 13 memorandum, is it? 14 A. This is the memorandum I believe to 15 Broadridge pointing out the issues and 16 requesting I thought to be rerun. 17 Q. But this does not state that Barclays 18 actually reran the calculation, does it? 19 A. I don't believe it does, no. 20 Q. Okay. 21 MR. OXFORD: Amy, not to interrupt, 22 but it occurs to me that there was a 23 document I marked at Mr. Vinella's 24 deposition that might be the one your 25 looking for.</p>
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<p>1 D. McIsaac 2 MS. NEUHARDT: We can talk about that 3 off the record, but that's -- 4 MR. OXFORD: Okay. 5 MS. NEUHARDT: If he -- are you saying 6 that he relied on that document? 7 MR. OXFORD: That may be the document 8 he relied upon. I don't have it with me 9 today, but -- but I'm happy to review it and 10 let you know if that was what he relied 11 upon. 12 Q. Okay. And then you also referred to 13 Exhibit 2 to your original -- no, I'm sorry, 14 your rebuttal? 15 A. Rebuttal. 16 Q. Yes. And can you tell me what Exhibit 17 2 is? 18 A. Exhibit 2 is a schedule of all the FID 19 accounts and the assets in their accounts on 20 9/19, and these were the assets that were at 21 Chase. 22 Q. And from whom did you receive this? 23 A. From the financial advisors of the 24 Trustee. 25 Q. And did you rely upon a non-redacted</p>	<p>1 D. McIsaac 2 version of this document? 3 A. I believe I did. I believe it had the 4 names of the customers in there. 5 MS. NEUHARDT: We would like that 6 document, Neil. 7 MR. OXFORD: I'll take your request 8 under advisement. 9 Q. And from this document you believe you 10 were able to determine that these were customer 11 assets? 12 A. These are the account numbers for the 13 customers and they showed the ranges of where 14 the accounts were in the customer range. 15 Q. Can you show me what on here is 16 telling you that? 17 A. The redacted portion doesn't have the 18 account numbers. 19 Q. The redacted portions. 20 We definitely need the unredacted 21 version. 22 Did you do any research to confirm 23 that there were no subordination agreements 24 associated with these accounts? 25 A. These accounts were all listed as</p>

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<p>1 D. McIsaac 2 customers. So, no, I did not do any 3 subordination -- review to see if any customers 4 in the FID subordinated their accounts to the 5 Trustee. But if they did, then I don't know why 6 they would be locked up in a separate account at 7 Chase to the benefit of customers. 8 MS. NEUHARDT: Strike the last part of 9 his answer as nonresponsive. Okay. 10 Q. I think we've followed up on 11 everything from the break. I would like to turn 12 to your discussion of -- in your rebuttal 13 report, it's paragraphs 19 through 21; in your 14 original report, it is paragraphs 39 and 40; and 15 you refer to it as "Assets Subject to LBI 16 Administration." 17 What is your basis for stating that 18 the 439 million in assets that you have 19 identified are customers assets? 20 A. These were assets in a box listed as 21 customer box, customer security -- customer no 22 lien account at LBIE for the benefit of LBI 23 customers. 24 Q. Did you do any independent 25 investigation of that?</p>	<p>1 D. McIsaac 2 A. I reviewed the LBIE agreement that 3 said that they were holding account free of 4 lien. 5 Q. When say LBIE you're referring to 6 L-B-I-E, right? 7 A. Yes. 8 They give control location memos to 9 the SEC. 10 Q. Okay. Were you -- were you aware of a 11 general policy at LBI that they would include 12 LBIE customers assets -- I'm sorry, LBI customer 13 assets that were held by LBIE in their lockup 14 requirement calculation? 15 A. I don't understand the question. I'm 16 sorry. 17 Q. Okay. Well, do you know whether as a 18 matter of course LBI would in fact include in 19 its reserve calculation an adjustment for the 20 LBI customer assets that were held by LBIE? 21 A. I saw nothing in the calculations that 22 led me to believe that they were not -- that 23 they were not considered them in a good control 24 location and, therefore, putting a credit in the 25 reserve formula.</p>
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<p>1 D. McIsaac 2 Q. Did you ask -- did you speak to 3 anybody about this issue? 4 A. I did not speak to any Lehman or 5 Barclays employees. 6 Q. Okay. If in fact there was an 7 adjustment as a matter of course at LBI -- for 8 LBI customer assets held at LBIE, would that 9 change your opinion in any way? 10 MR. OXFORD: Objection to form. 11 A. If the 439 that I believe allocated to 12 a good control location and, therefore, was not 13 put into the formula, if somebody could show me 14 the adjustment putting that \$439 million into 15 the formula, I guess I would change my opinion, 16 but I'm not sure why they would get a good 17 control letter and then do that, but ... 18 Q. Your testimony is, though, that you 19 don't know one way or the other, correct? 20 A. I did not see anything to that. 21 Q. All right. Let's turn to your 22 discussion of the OCC deposit, which is in your 23 rebuttal report, paragraphs 24 and 25 on pages 24 11 and 12, and in your original report it is 25 paragraph 45 on page 17.</p>	<p>1 D. McIsaac 2 Now, is a broker-dealer able to 3 withdraw and transfer margin at the OCC without 4 funding the reserve account at the time of the 5 withdrawal? 6 A. Yes. 7 Q. Okay. Let's go, earlier today we 8 talked about the statement in paragraph 13 of 9 your rebuttal affidavit that the only relevant 10 point in time for the purpose of determining the 11 accuracy of LBI's reserve calculation is 12 September 19, 2008? 13 A. That's correct. 14 Q. Do you believe that that principle 15 applies to your opinion about the OCC deposit? 16 MR. OXFORD: Objection. Form. 17 A. I believe that opinion applies to it. 18 Q. Okay. Had the OCC margin deposit that 19 you refer to in your reports been withdrawn as 20 of September 19? 21 A. No, but in previous discussions 22 earlier this morning on my expert report, the 23 Barclays lawyers were assuming that the margin 24 was being transferred to LBI as of the 17th, so 25 if -- if to -- I'm sorry, to Barclays as of the</p>

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<p>1 D. McIsaac</p> <p>2 17th.</p> <p>3 If LBI had agreed to transfer that</p> <p>4 money, then I would assume that it was not a</p> <p>5 good debit in the formula because it was</p> <p>6 impaired.</p> <p>7 Q. Well, by that logic, as of the 17th,</p> <p>8 hadn't LBI agreed to transfer, for example, all</p> <p>9 of its private investment management accounts to</p> <p>10 Barclays as of a later date?</p> <p>11 MR. OXFORD: Objection. Form.</p> <p>12 A. I believe they determined what they</p> <p>13 were going to transfer. Until you transfer the</p> <p>14 customers' assets and the customer accounts,</p> <p>15 they're still included in the reserve formula</p> <p>16 until such time as you can transfer them.</p> <p>17 If you have impeded an asset, then I</p> <p>18 don't think you could put it into the formula,</p> <p>19 just as if I had a customer receivable that</p> <p>20 wasn't fully secured, I wouldn't put it in the</p> <p>21 formula.</p> <p>22 So if this deposit was sold to</p> <p>23 somebody else prior to the 19th, then I think it</p> <p>24 probably doesn't belong in the formula as of the</p> <p>25 19th.</p>	<p>1 D. McIsaac</p> <p>2 Q. Now, do you know whether the contract</p> <p>3 had been approved by the court prior to -- well,</p> <p>4 you said the 17th. Do you know if that contract</p> <p>5 had been approved by the court as of the 17th?</p> <p>6 A. I don't know when the contract was</p> <p>7 approved. I believe it was sometime after the</p> <p>8 fact, but if, as of the 17th, you agreed to sell</p> <p>9 it and gave up your rights to that deposit, then</p> <p>10 I don't know if that would be a good debit in</p> <p>11 the formula. And I'm just going by what</p> <p>12 everybody was saying, that the -- they agreed to</p> <p>13 sell the margin prior to that and that thought</p> <p>14 process.</p> <p>15 Q. Could you show me -- well, are you</p> <p>16 basing your opinion on anything in Rule 15c3-3?</p> <p>17 A. I believe there are many parts of 3-3</p> <p>18 that would talk about unsecured receivables and</p> <p>19 how they would not go into the formula. This is</p> <p>20 allowed in the formula because it's coming from</p> <p>21 a clearing org. receivable. If you have given</p> <p>22 up your rights to that receivable, then I don't</p> <p>23 think you would include it in the formula.</p> <p>24 Q. And is your position that LBI had</p> <p>25 given up its rights as of the 17th prior to</p>
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<p>1 D. McIsaac</p> <p>2 court approval?</p> <p>3 MR. OXFORD: Objection. Form.</p> <p>4 Misstates the witness's testimony.</p> <p>5 You can answer the question again.</p> <p>6 A. No, my opinion is if it's determined</p> <p>7 that that margin was sold prior to the 19th, or</p> <p>8 as of the 19th, then it does not belong as a</p> <p>9 debit in the formula.</p> <p>10 Q. Is your opinion that a contract that</p> <p>11 has not yet been closed nonetheless affects the</p> <p>12 15c3-3 calculation?</p> <p>13 A. My opinion is if you tell me you have</p> <p>14 impeded that asset and you -- you have</p> <p>15 effectively given up your right to that asset, I</p> <p>16 would say that asset's not a good asset in the</p> <p>17 formula. And that's all I'm saying. I'm not --</p> <p>18 I don't know when the contract was sold.</p> <p>19 I'm being told, and people are</p> <p>20 negotiating that -- and I think this would be</p> <p>21 decided by the court eventually -- that the</p> <p>22 agreement sold the margin to Barclays as of the</p> <p>23 17th if that's the date of the agreement and</p> <p>24 that's when that account -- that's when that</p> <p>25 asset stopped becoming I believe a good asset</p>	<p>1 D. McIsaac</p> <p>2 for LBI for reserve formula purposes.</p> <p>3 They have given up their right to</p> <p>4 receive that asset. I don't think they can put</p> <p>5 a debit in there. The same as if I told a stock</p> <p>6 borrow counterparty don't give me your money</p> <p>7 back, I don't care. It wouldn't go in the</p> <p>8 formula.</p> <p>9 Q. If it were to turn out that the --</p> <p>10 they had not given up their rights until such</p> <p>11 time as the court approved of the contract,</p> <p>12 would that change your opinion?</p> <p>13 MR. OXFORD: Objection. Form.</p> <p>14 A. I don't know what the date would be</p> <p>15 that they agreed to the contract. I -- this --</p> <p>16 I think this will be going in front of the court</p> <p>17 eventually and the court will decide whether or</p> <p>18 not the contract stays -- states that that was</p> <p>19 being sold as at that point in time.</p> <p>20 If that's the point in time I believe</p> <p>21 the contract was effective or signed</p> <p>22 theoretically agreed to as of the 19th, I don't</p> <p>23 know if it matters when it's signed. If I have</p> <p>24 agreed to impede an asset at any point in time,</p> <p>25 it doesn't matter when I sign it. I think I</p>

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<p>1 D. McIsaac 2 would not include that debit in the reserve 3 formula. 4 Q. So even if a court were to determine 5 that the contract was not effective until it 6 were approved, it's nonetheless your opinion 7 that the asset would be impeded as of the time 8 they signed? 9 A. As of the time that somebody agreed 10 that that asset was not an asset of theirs, that 11 they have sold -- they have given that asset 12 away, they sold that asset, I can't see how that 13 asset would be good for the -- as a debit in the 14 reserve formula. 15 Q. Do you believe LBIE -- sorry, LBI 16 continued to be able to withdraw from that OCC 17 account after the 17th? 18 A. I believe there were some restrictions 19 at the OCC on the 19th that they could not 20 withdraw moneys out of there on the 19th. 21 Q. The restrictions were imposed by the 22 OCC, correct? 23 A. Yes, they were. 24 Q. They were not imposed by Barclays? 25 A. I don't think Barclays imposed them,</p>	<p>1 D. McIsaac 2 no. 3 Q. So it's not the contract that was 4 preventing them from withdrawing assets after 5 the 17th? 6 A. As I stated earlier today, you weren't 7 here, that I would have anticipated the purchase 8 agreement to have some indication that they were 9 selling margin and at that point in time to talk 10 about the amount of margin that was being sold. 11 But once you've given up that right, 12 whether it be 500 million for a billion, I don't 13 think you can put it in the formula anymore. 14 Q. But they could withdraw it from the 15 OCC account? 16 A. And if it wasn't in the OCC account, 17 it wouldn't be a debit in the formula either. 18 Q. I understand, but I'm trying to 19 understand. Essentially you're saying that the 20 asset was impaired as of the date the contract 21 was signed; is that correct? 22 A. I'm saying if the -- if the court 23 determines that that is what happened on the -- 24 as of the Asset Purchase Agreement and that the 25 margin was being sold by Lehman to Barclays,</p>
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<p>1 D. McIsaac 2 that that debit should not be in the formula 3 because they have given up their right to 4 receive that debit and it is no longer there for 5 the protection of customers. 6 Q. Yet you're also saying they 7 nonetheless had the right to withdraw those 8 funds prior to the -- or after the 17th from the 9 OCC? 10 A. And had they withdrawn those funds, 11 they wouldn't be in the formula. 12 Q. But they wouldn't be in the formula 13 for a different reason, correct? Because they 14 had been withdrawn? 15 A. That's right, and I don't -- 16 Q. And not because -- 17 A. And I don't know if the agreement -- I 18 didn't see anything in the agreement stipulated 19 that the amount that was there as of the 17th is 20 what was being sold, if the amount was there at 21 the end of the day is what was being sold or if 22 anything was being sold. 23 If, if it's determined that that \$507 24 million was being sold and that it was impaired 25 by the 19th by the thought process of selling</p>	<p>1 D. McIsaac 2 it, I don't think the debit should have been in 3 the formula. 4 Q. And yet you nonetheless believe that 5 if they also contracted to transfer tens of 6 thousands of customer accounts in that same 7 contract, that that transfer of customer 8 accounts should not be included in the 15c3-3 9 calculation? 10 MR. OXFORD: Objection. 11 A. No, I said the -- 12 MR. OXFORD: Objection to form. 13 A. The customer accounts should be 14 included in the calculation until such time as 15 they're transferred. If you're putting a debit 16 in the formula, effectively reducing your lockup 17 requirement because you have a good asset, 18 that's what I'm saying, if that was impeded, I 19 don't believe there should have been a debit in 20 the formula. 21 Q. If there's no adjustment to the debit 22 after withdrawal, why is an adjustment by an 23 agreement to withdraw on a later date required? 24 A. As far as I'm concerned, the agreement 25 should have stipulated if there was an asset to</p>

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<p>1 D. McIsaac 2 be sold, what amount was to be sold, or what 3 amount at what point in time should have been 4 sold. 5 What I am saying if, if in fact the 6 court determines that that was a valid 7 transaction and that LBI gave up its rights to 8 this debit, that it should not have been in the 9 formula as of the 19th. 10 Q. And do you know whether the contract 11 stipulated an amount to be sold or at what point 12 in time to determine the amount to be sold? 13 A. No, I did not. 14 Q. So if in fact the amount was not 15 limited to \$507 million or the date as of which 16 the transfer would be made was later than 9/19, 17 does your opinion change in any way? 18 MR. OXFORD: Objection. 19 A. If at any point -- 20 MR. OXFORD: Objection to the form. 21 A. Sorry. 22 If at any point in time that was 23 determined that they had given up their rights 24 to that asset, any calculation done from that 25 point in time I do not believe should have</p>	<p>1 D. McIsaac 2 included that asset as a debit in the formula. 3 Q. Can you show me where in the either 4 FINRA or SEC Rule 15c3-3 it requires an 5 adjustment prior to the delivery of the assets 6 to another party. 7 A. I don't believe there's anything in 8 3-3 that talks to this. This is my opinion that 9 if you put a debit in the formula, it needs to 10 be realizable. It has to be secured. The 11 security for this would be that it's at the OCC 12 and they will return it to you when not needed. 13 Q. Okay. So you do not believe there's 14 anything in 3-3 that would require that? 15 A. I don't think there's anything in 3-3 16 that talks to an OCC deposit being sold 17 during -- prior to a calculation being finalized 18 and how it should be accounted for in the 19 formula. 20 Q. Okay. Is there anything in the FINRA 21 interpretations of 3-3 that would cover this 22 issue? 23 A. There's nothing that will cover this 24 issue. There are -- there are issues within 3-3 25 and I will gladly dig them out eventually, we</p>
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<p>1 D. McIsaac 2 don't have time now, to show you that debits 3 have to be secured. I can't put a debit in for 4 a stock borrow if it's not secured. I can't put 5 any amount in that's not secured. 6 Q. Have you heard of a Transfer and 7 Assumption Agreement, TAA? 8 A. Yes. 9 Q. Let me go back. Until such time as 10 the account would have actually been transferred 11 to Barclays, wouldn't OCC still owe margin to 12 LBIE -- to LBI? My apologies. 13 A. LBI would have been the -- the 14 clearing firm at the OCC. If at any point in 15 time I've given up my rights to that, all I'm 16 saying is I don't think it's a good debit in the 17 formula. Whether or not OCC would give it back 18 to us or not, or give it back to LBI or not, at 19 any point in time when that sale was 20 consummated, they wouldn't get it back. 21 So putting a debit in the formula, 22 knowing that you cannot collect it, I think is 23 not in compliance with the rules. 24 Q. And yet you acknowledge that LBI could 25 have withdrawn that money after the 17th from</p>	<p>1 D. McIsaac 2 the OCC account? 3 A. I -- 4 MR. OXFORD: Objection. Form. 5 A. Yes, I acknowledge they could have 6 done that. 7 Q. Then how is that money less secured? 8 A. Because as of the 19th -- you have one 9 agreement that you're telling me that they -- 10 that they get the margin, and all I'm saying is 11 if Barclays believes that that agreement means 12 that they get the margin and the judge says, 13 yes, that was a binding agreement at that point 14 in time and they get the margin, all I'm saying 15 is that then that debit was impeded and I can't 16 believe that you would put a debit in the 17 formula that is impeded. And that's all. If 18 you don't have -- if you cannot have the right 19 to collect it, you shouldn't put the debit in 20 there. 21 Q. I believe I had asked if you were 22 familiar, if you had heard of the TAA? 23 A. Yes. 24 Q. Okay. Now, were you shown that 25 earlier today?</p>

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<p>1 D. McIsaac</p> <p>2 A. Yes, I was.</p> <p>3 Q. Do you recall whether or not that</p> <p>4 agreement was signed before or after September</p> <p>5 19?</p> <p>6 A. I believe it was signed on -- either</p> <p>7 by some people on the 20th and some people</p> <p>8 possibly on the 22nd.</p> <p>9 Q. If the court were to hold that it was</p> <p>10 the TAA -- if the court were to hold that it was</p> <p>11 the TAA that effected Barclays' right to the</p> <p>12 margin deposits, would it still be your opinion</p> <p>13 that the calculation as of the 19th should have</p> <p>14 been adjusted?</p> <p>15 MR. OXFORD: Object to the form.</p> <p>16 Assumes facts not in evidence.</p> <p>17 MS. NEUHARDT: I believe as an expert</p> <p>18 I'm entitled to ask him hypotheticals.</p> <p>19 THE WITNESS: Is it okay to answer?</p> <p>20 MR. OXFORD: You can answer.</p> <p>21 A. I understand it might not have been</p> <p>22 signed at a point in time. I believe the OCC</p> <p>23 was looking for it to be signed as of the 19th.</p> <p>24 There was all kinds of e-mails that I was shown</p> <p>25 before stating that they were looking for it to</p>	<p>1 D. McIsaac</p> <p>2 be signed to transfer it over effectively on the</p> <p>3 morning of the 22nd to Barclays.</p> <p>4 Again, that TAA is not a contract.</p> <p>5 That TAA I believe is an agreement between</p> <p>6 Barclays, Lehman, and the OCC to transfer</p> <p>7 Lehman's contract and in the Lehman name to</p> <p>8 Barclays. It's not the sale agreement for</p> <p>9 determining when that agreement was done or</p> <p>10 signed. It's a vehicle used to transfer -- for</p> <p>11 the OCC to transfer the account name from Lehman</p> <p>12 to Barclays.</p> <p>13 Q. That entire answer was nonresponsive.</p> <p>14 I move to strike it.</p> <p>15 Please answer my question, which is</p> <p>16 that if the court were to hold that it was the</p> <p>17 TAA that effected Barclays' right to the margin</p> <p>18 deposits, would it still be your opinion that</p> <p>19 the calculation as of the 19th should have been</p> <p>20 adjusted?</p> <p>21 A. I would have to determine or review</p> <p>22 what the court's reasoning why the TAA was the,</p> <p>23 in fact, the agreement between LBI and Barclays</p> <p>24 that sold that asset. Just -- I don't -- it's a</p> <p>25 hypothetical and I don't know. I don't consider</p>
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<p>1 D. McIsaac</p> <p>2 that a sale agreement.</p> <p>3 Q. If the court held that that was the</p> <p>4 agreement that impaired the asset, and it was</p> <p>5 not signed until the 20th or perhaps the 22nd,</p> <p>6 would it change your opinion that the</p> <p>7 calculation --</p> <p>8 A. No, it would not.</p> <p>9 Q. Let me finish my question.</p> <p>10 -- that the calculation as of the 19th</p> <p>11 should have been adjusted?</p> <p>12 A. No, it would not.</p> <p>13 Q. And why?</p> <p>14 A. Because it was negotiated, started</p> <p>15 negotiating it on the 19th, and I don't think</p> <p>16 you should put an asset -- a debit in the</p> <p>17 formula that you have impeded, whether or not</p> <p>18 you do it on Saturday or Sunday.</p> <p>19 Q. So it is your testimony that the mere</p> <p>20 start of negotiations impairs the asset?</p> <p>21 A. That it is impaired because prior to</p> <p>22 the next business day, I don't have that, I'm</p> <p>23 not allowed to have that asset anymore.</p> <p>24 Q. Because you started the negotiations?</p> <p>25 A. Because it was finalized by the next</p>	<p>1 D. McIsaac</p> <p>2 business day, by the morning of the next</p> <p>3 business day, which effectively, to me, it was</p> <p>4 done as of the close of business the 19th.</p> <p>5 Q. So you're saying that even though --</p> <p>6 even if an agreement is reached after the close</p> <p>7 of business, it would affect the calculation of</p> <p>8 that day rather than the calculation of the next</p> <p>9 business day?</p> <p>10 MR. OXFORD: Objection. Form.</p> <p>11 A. I believe that if you've sold the</p> <p>12 asset prior to you needing to make your lockup,</p> <p>13 the requirement, and you have impeded that asset</p> <p>14 in any way, shape or form, that you should not</p> <p>15 include it in the formula.</p> <p>16 If that asset -- if that agreement, if</p> <p>17 the court finds that that agreement is what sold</p> <p>18 the asset and that was signed as of the 21st or</p> <p>19 22nd, it was signed before the opening of</p> <p>20 business the next day, so as effectively on the</p> <p>21 19th they would not have had a receivable.</p> <p>22 Q. Well, perhaps I misunderstand your</p> <p>23 earlier testimony, but I thought you said that</p> <p>24 the calculation would be done on Friday, the</p> <p>25 19th, and in the ordinary course of business,</p>

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<p>1 D. McIsaac 2 this would be done every Friday? 3 A. Uh-huh. 4 Q. So how would an event that happened 5 after the calculation have to be retroactively 6 included in the prior calculation? 7 A. Because I'm only saying -- because 8 it's being done and agreed to prior to the time 9 that the calculation is finalized that it should 10 be -- should be reviewed in that respect. 11 Q. What portion of SEC Rule 15c3-3 are 12 you relying on for that opinion? 13 A. SEC Rule 3-3 talks about secured 14 assets, and you cannot put a customer debit in 15 the formula unless it's fully secured. 16 Q. I just want to make very clear that it 17 is your position that a contract that was only 18 being negotiated prior to the close of business 19 on Friday, nonetheless if it reached agreement 20 prior to the opening of business the next 21 business day, it should -- it would result in a 22 retroactive recalculation of the requirement -- 23 of the calculation done on Friday? 24 MR. OXFORD: Is that -- that's a 25 statement, Amy. Do you have a question?</p>	<p>1 D. McIsaac 2 Q. Sorry. I did put the "it" before the 3 "is." 4 Is it your position that a contract 5 that is only being negotiated prior to the close 6 of business on Friday but that is closed prior 7 to the opening of business on Monday would 8 require a retroactive recalculation of the 9 calculation done Friday? 10 A. My opinion is that I don't believe the 11 TAA is -- is the contract. 12 Q. I'm not asking you whether or not the 13 TAA is the contract. I'm asking you whether or 14 not -- 15 A. I'm trying to finish my thought. 16 MR. OXFORD: Amy, we're all trying to 17 get out of here. If you could let Mr. 18 McIsaac finish his answer -- 19 MS. NEUHARDT: I'm going to ask it 20 again because he's clearly not answering the 21 question. 22 MR. OXFORD: Well, it's very hard for 23 you to reach that conclusion if you don't 24 let him finish his answer. 25 Q. But if you're going to tell me that</p>
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<p>1 D. McIsaac 2 the TAA is not the contract, I'll ask it again. 3 A. I believe that the TAA impedes the 4 asset as of the 19th. 5 Q. Please show me what portion of 15c3-3 6 justifies that conclusion. 7 A. I -- I don't believe you'll find 8 anything in 3-3 that will say that, but I 9 believe that the asset is impeded as of the 19th 10 if you have agreed to sell it and not receive 11 any money back in return for it that you can put 12 into the customer debit, and that's all I'm 13 saying. 14 Q. Is there anything in FINRA that 15 supports that? 16 A. I don't believe there's anything other 17 than talking about secured assets. 18 Q. Let's move on to what was in your 19 original affidavit as paragraphs 46 to 49 and 20 you refer to as customer property seizure during 21 the transfer process. 22 A. Uh-huh. 23 Q. Now, as I understand your opinion in 24 your original affidavit, your basis for 25 identifying this 82 million was that LBI's RISC</p>	<p>1 D. McIsaac 2 system did not feed into LBI's Rule 15c3-3 3 calculation; is that correct? And I'm looking 4 at paragraph 47. 5 MR. OXFORD: Object to the form. 6 A. Yes, I think I say here that the RISC 7 system doesn't automatically feed the 3-3 8 calculation. 9 Q. Have you since learned that that is 10 incorrect? 11 A. No, I've been told and informed that 12 the RISC system is reviewed by personnel who 13 supply the preparers the debit and credit 14 balances for customer accounts to be included in 15 the formula. 16 Q. Who did you speak to that informed you 17 of that? 18 A. The Trustee's financial advisors. 19 Q. Is that Deloitte? 20 A. Yes, it is. 21 Q. Did you speak to anyone who had been 22 an LBI employee to confirm that to be true? 23 A. No, I have not. 24 Q. Did you ever speak to Peter Tennyson? 25 A. No.</p>

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<p>1 D. McIsaac</p> <p>2 Q. While she gets this document, in your</p> <p>3 rebuttal affidavit, paragraphs 22 to 23, you</p> <p>4 discuss the same issue. You do not mention the</p> <p>5 RISC system as a basis for your report in the</p> <p>6 rebuttal affidavit.</p> <p>7 A. Uh-huh.</p> <p>8 Q. Why is that?</p> <p>9 A. I think we tried to further clarify</p> <p>10 that these were moneys that were -- the accounts</p> <p>11 were debited as if the customers were paid. The</p> <p>12 customers were never paid, so an adjustment had</p> <p>13 to be made to -- to, in the normal course of</p> <p>14 business, you reconcile your bank accounts, you</p> <p>15 look at items that you thought were paid that</p> <p>16 weren't paid, and you would make the adjustments</p> <p>17 for those.</p> <p>18 These moneys were never paid to the</p> <p>19 customers so you effectively still have a</p> <p>20 payable to the customer.</p> <p>21 Q. Okay. And now, what is your basis for</p> <p>22 saying these moneys were never paid to the --</p> <p>23 paid to the customers?</p> <p>24 A. What I have seen is that the debits,</p> <p>25 they debited their accounts, and there was no</p>	<p>1 D. McIsaac</p> <p>2 adjustment coming from the RISC system that I</p> <p>3 was shown adjusting for this \$82 million.</p> <p>4 Q. Do you have any other basis for saying</p> <p>5 the moneys were never paid out?</p> <p>6 A. No, that is it. I think the customers</p> <p>7 actually made claims, possibly to the estate,</p> <p>8 that they weren't paid their moneys.</p> <p>9 Q. If it turns out that the RISC system</p> <p>10 did in fact feed into the 15c3-3 calculation,</p> <p>11 would that change your opinion in any way?</p> <p>12 A. Not if these amounts were not included</p> <p>13 as payables to the customers at that point in</p> <p>14 time.</p> <p>15 Q. Did you do any investigation of</p> <p>16 whether or not items within the RISC system</p> <p>17 would or would not have been fed into the 15c3-3</p> <p>18 calculation?</p> <p>19 A. I was informed that the debits and</p> <p>20 credits to be included in the reserve formula</p> <p>21 off of the RISC system were provided by</p> <p>22 personnel responsible for the RISC system</p> <p>23 independent of anything else.</p> <p>24 Q. Okay.</p> <p>25 A. They provided the adjustments to the</p>
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<p>1 D. McIsaac</p> <p>2 formula for that day.</p> <p>3 Q. And this was Deloitte that informed</p> <p>4 you of that?</p> <p>5 A. Yes.</p> <p>6 Q. We may have to come back to that when</p> <p>7 she comes back.</p> <p>8 Okay. Now, your original affidavit</p> <p>9 discusses a proposed adjustment of 2.3 billion</p> <p>10 allegedly owed to LBIE's customers, correct?</p> <p>11 A. Uh-huh.</p> <p>12 Q. You do not discuss that in your</p> <p>13 rebuttal report, correct?</p> <p>14 A. That's correct.</p> <p>15 Q. Okay. Why is that?</p> <p>16 A. I believe the Trustee's advisor -- the</p> <p>17 Trustee has removed that and put that as under</p> <p>18 investigation until such time as it can be</p> <p>19 concluded whether or not it is a viable</p> <p>20 liability to the customers.</p> <p>21 Q. Okay. Do you continue to have an</p> <p>22 opinion on whether or not the adjustment is</p> <p>23 necessary?</p> <p>24 A. If it's determined that there is a</p> <p>25 liability to the omnibus customer account, yes,</p>	<p>1 D. McIsaac</p> <p>2 it should then go in the formula. It was in the</p> <p>3 records at that point in time as a payable and</p> <p>4 was removed from the formula.</p> <p>5 Q. Okay. But you do not know as of today</p> <p>6 whether or not there was in fact a liability to</p> <p>7 the omnibus customer account?</p> <p>8 A. No, that's why it's still under</p> <p>9 investigation.</p> <p>10 Q. Did you believe that it was not still</p> <p>11 under investigation at the time of your October</p> <p>12 5 affidavit?</p> <p>13 A. I believe we -- I'll have to look at</p> <p>14 my affidavit, but I believe we sort of alluded</p> <p>15 to the fact that it's still being investigated,</p> <p>16 and if such time it was found not to be true, we</p> <p>17 wouldn't require it, but I'll have to look.</p> <p>18 If you look at item -- at paragraph</p> <p>19 44, I basically say I was not able to see any</p> <p>20 documents to make this adjustment, and until</p> <p>21 such time as we saw it, that it should be held</p> <p>22 until we can determine if it should actually be</p> <p>23 owed.</p> <p>24 Q. Well, your October 5 report appears to</p> <p>25 be divided into, starting on page 13, items --</p>

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1 D. McIsaac
2 you phrase it as items omitted or incorrectly
3 reported in the reserve formula, and that goes
4 through the top of page 19, and then on 19,
5 number 2, is items currently under
6 investigation, and then you list a number of
7 other items?
8 A. Uh-huh.
9 Q. Why did you put the 2.3 billion in
10 your first category of items discussed in your
11 original affidavit as opposed to the category of
12 items under investigation?
13 A. Because at this point in time we had
14 shown -- been shown no documents that would
15 prove that this credit should be -- should come
16 out. Subsequent to that, I believe the Trustee
17 has had some discussions with people and have
18 decided to remove it until such time as I've
19 seen those documents. I'm just not putting it
20 in my affidavit until I can see something that
21 proves it or that the claim is -- the claim as I
22 believe is still out there from LBIE and until
23 such time as it can be proven incorrect.
24 Q. So in October when you did your
25 initial affidavit, you assumed as true what the

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1 D. McIsaac
2 to 9/19?
3 A. We saw no proof that that
4 adjustment -- there was no proof behind that
5 adjustment that we could see at that point in
6 time that I was shown or could be found
7 supporting taking the credit out of the formula.
8 Q. Did you investigate whether or not the
9 obligation to the customer was satisfied prior
10 to 9/19?
11 A. I don't -- the customer is LBIE.
12 Q. The underlying customer?
13 A. The underlying customer is LBIE's
14 responsibility. I don't think it's LBI's
15 responsibility.
16 Q. So is your answer no?
17 A. No.
18 Q. Have you conducted any further
19 analysis on this issue since the time of your
20 October 5 affidavit?
21 A. No.
22 Q. Now, we referred, actually, to Section
23 2 of your original affidavit as items currently
24 under investigation?
25 A. Uh-huh.

1 D. McIsaac
2 Trustee gave you?
3 A. I saw the -- the credit coming out of
4 the formula, an adjustment to the formula for
5 the \$2.3 billion. There was no support for that
6 credit coming out of the formula.
7 Subsequent to that, I believe the
8 Trustee and his advisors may have additional
9 information that they are investigating and they
10 decided to take it out of their motion.
11 Q. In October did you investigate whether
12 or not the amount at issue was related to an
13 LBIE customer account or proprietary account?
14 A. It was sitting in the LBIE omnibus
15 customer account as a payable.
16 Q. If it was in the customer account, did
17 you investigate whether or not the obligation of
18 the customer had been satisfied prior to LBIE
19 filing for administration?
20 A. There was an -- I don't know if that
21 has anything to do with it. What does LBIE --
22 this is owed to LBIE for its customers.
23 Q. All right. Then if it was a customer
24 account, did you investigate whether or not the
25 obligation to the customer was satisfied prior

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1 D. McIsaac
2 Q. The first one you identify on page 19
3 starting with paragraph 51 is a Chase Bank
4 overdraft. Have you done any further
5 investigation on this matter since your October
6 5 report?
7 A. No.
8 Q. Have you done any further
9 investigation on any of the other --
10 A. No.
11 Q. -- issues identified?
12 A. No.
13 Q. Do you know of any SEC regulation that
14 would prevent Lehman Brothers Holding Company
15 from paying an amount to Barclays that was equal
16 to the amount held in the reserve account?
17 MR. OXFORD: Objection. Vague.
18 A. I -- I am not fluent in all SEC rules
19 as they affect holding companies.
20 Q. Okay. Have you done any investigation
21 as to the propriety of the amount of customer
22 claims that have been filed against the estate?
23 A. No, I have not reviewed the customer
24 claim process.
25 Q. So you have no opinion on how much the

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<p>1 D. McIsaac 2 estate will eventually have to pay out? 3 A. No, I have not seen that number at 4 this point in time. 5 MS. NEUHARDT: Okay. Let's take a 6 five-minute break. I may be through. 7 THE VIDEOGRAPHER: The time is 7:09. 8 We are going off the record. 9 (Recess.) 10 THE VIDEOGRAPHER: The time is 7:19. 11 We're back on the record. 12 BY MS. NEUHARDT: 13 Q. Mr. McIsaac, right before we broke, 14 you informed me that you have not conducted any 15 further investigation relating to the items 16 listed in Section 2 of your original affidavit 17 as items currently under investigation? 18 A. That's correct. 19 Q. Have you been informed of any progress 20 or findings of the financial advisors relating 21 to those items under consideration? 22 A. I believe in my rebuttal report I make 23 a statement to the fact that they have to date 24 have found nothing else that would impact the 25 formula.</p>	<p>1 D. McIsaac 2 Q. And do you know -- did they inform you 3 whether or not they have completed their 4 investigation as to any of those matters? 5 A. I don't believe they have finished it. 6 Q. Okay. And we discussed earlier that 7 if a calculation is done on a Friday in the 8 ordinary course of business and an additional 9 deposit is required, that deposit would be done 10 the following Tuesday at 10 A.M.; is that 11 correct? 12 A. By the following Tuesday at 10 A.M. 13 Q. No later? 14 A. Yes. 15 Q. Okay. In that situation, is a 16 broker-dealer in violation of SEC rules at any 17 time prior to 10 A.M. on the following Tuesday? 18 A. In violation of SEC rules regarding 19 what? They could be -- 20 Q. Are they in violation of any aspect of 21 SEC Rule 15c3-3? 22 A. As it pertains to that deposit, no. 23 There could be other reasons that they're in 24 violation of rules. 25 Q. But as it pertains to that deposit,</p>
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<p>1 D. McIsaac 2 they would not be in violation as of that 3 Friday? 4 A. Correct. 5 Q. Okay. 6 MS. NEUHARDT: I have no further 7 questions. None from anybody else? 8 THE VIDEOGRAPHER: The time is 7:20. 9 This is the end of today's deposition. 10 We're going off the record. 11 oOo 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p> <p style="text-align: center;">_____ DANIEL McISAAC</p> <p>Subscribed and sworn to before me this day of 2010.</p> <p>_____ _____</p>	<p>1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p> <p style="text-align: center;">CERTIFICATE STATE OF NEW YORK) : ss COUNTY OF NEW YORK) I, Kathy S. Klepfer, a Registered Merit Reporter and Notary Public within and for the State of New York, do hereby certify: That DANIEL McISAAC, the witness whose deposition is herein before set forth, was duly sworn by me and that such deposition is a true record of the testimony given by such witness. I further certify that I am not related to any of the parties to this action by blood or marriage and that I am in no way interested in the outcome of this matter. I further certify that neither the deponent nor a party requested a review of the transcript pursuant to Federal Rule of Civil Procedure 30(e) before the deposition was completed. In witness whereof, I have hereunto set my hand this 7th day of April, 2010. _____</p>

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EXHIBIT D

1 Highly Confidential

2 UNITED STATES BANKRUPTCY COURT

3 SOUTHERN DISTRICT OF NEW YORK

4 -----X

5 IN RE:

6 Chapter 11

7 LEHMAN BROTHERS

Case No. 08-13555(JMP)

8 HOLDINGS, INC. et al.,

9 Debtors.

10 -----X

11
12 HIGHLY CONFIDENTIAL

13 DEPOSITION OF PETER VINELLA

14 New York, New York

15 February 5, 2010

16
17
18 Reported by:

Bonnie Pruszynski, RMR

19 JOB NO. 28243

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<p>1 Highly Confidential 2 February 5, 2010 3 9:30 a.m. 4 5 6 Deposition of PETER VINELLA, held at 7 Jones Day, LLP, 222 East 41st Street, New 8 York, New York, before Bonnie Pruszyński, 9 Registered Professional Reporter, Registered 10 Merit Reporter, Certified LiveNote Reporter, 11 and a Notary Public of the State of New 12 York. 13 14 15 16 17 18 19 20 21 22 23 24 25 TSG Reporting - Worldwide 877-702-9580</p>	<p>1 Highly Confidential 2 A P P E A R A N C E S: 3 JONES DAY, LLP 4 Attorneys for Lehman Brothers, Inc. 5 222 East 41st Street 6 New York, New York 10017-6702 7 BY: KELLY CARRERO, ESQ. 8 K. ADAM BLOOM, ESQ. 9 10 BOIES, SCHILLER & FLEXNER, LLP 11 Attorneys for Barclays 12 5301 Wisconsin Avenue, N.W. 13 Washington, D.C. 20015 14 BY: AMY NEUHARDT, ESQ. 15 HEATHER KING, ESQ. 16 17 HUGHES HUBBARD & REED, LLP 18 Attorneys for SIPA Trustee 19 One Battery Park Plaza 20 New York, New York 10004 21 BY: NEIL J. OXFORD, ESQ. 22 FARA TABATABAI, ESQ. 23 24 QUINN EMMANUEL 25 Attorneys for the Creditors Committee 51 Madison Avenue New York, New York BY: ROBERT DAKIS, ESQ. TSG Reporting - Worldwide 877-702-9580</p>
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<p>1 Highly Confidential 2 A P P E A R A N C E S (continued): 3 Also Present: David Aman, Esq. 4 Cleary, Gottlieb Steen & Hamilton 5 Chris Harris, Deloitte & Touche 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 TSG Reporting - Worldwide 877-702-9580</p>	<p>1 Highly Confidential - P. Vinella 2 (Exhibit 590 marked for 3 identification as of this date.) 4 (Exhibit 591 marked for 5 identification as of this date.) 6 (Exhibit 592 marked for 7 identification as of this date.) 8 (Exhibit 593 marked for 9 identification as of this date.) 10 (Exhibit 594 marked for 11 identification as of this date.) 12 (Exhibit 595 marked for 13 identification as of this date.) 14 (Exhibit 596 marked for 15 identification as of this date.) 16 (Exhibit 597 marked for 17 identification as of this date.) 18 (Witness sworn.) 19 PETER VINELLA, 20 called as a witness, having been first 21 duly sworn, was examined and testified 22 as follows: 23 EXAMINATION 24 BY MR. OXFORD: 25 Q Good morning, Mr. Vinella. TSG Reporting - Worldwide 877-702-9580</p>

1 P. Vinella
2 We met off the record. My name is
3 Neil Oxford. I'm with the law firm of Hughes
4 Hubbard & Reed, and we represent the SIPA trustee
5 in this litigation.

6 I have handed you some exhibits that
7 I have premarked that I will just identify now for
8 the record.

9 Exhibit 590 is the report -- rather
10 the affidavit of Daniel McIsaac, dated
11 October 5th, 2009.

12 Exhibit 591 is your expert report
13 dated January 8th, 2010.

14 And Exhibits 592 through 597 were
15 produced to me by your counsel, and I understand
16 them to be your reliance notes in this matter, and
17 we will be referring to these throughout the
18 deposition. I thought it would just be handy for
19 you to have those in front of you.

20 A Thank you.

21 Q Tell me, sir, have you been deposed
22 before?

23 A Yes, I have.

24 Q How many times?

25 A I believe four.

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1 P. Vinella

2 Q So you know the routine here. I'm
3 going to ask questions and you will answer them.
4 If you'll try to make your answers clear so that
5 Bonnie can take them down, that would be helpful.

6 If you could wait until I finish my
7 question before you answer it, because if we start
8 to talk over each other, it's going to be again
9 hard for Bonnie to take it down.

10 When I ask a question and you answer
11 it, I will assume that you understand it. Is that
12 fair?

13 A Yes.

14 Q But if you don't understand any
15 question, I would be happy to try to clarify that.

16 A Okay.

17 Q Also, this deposition -- it may seem
18 like it at some times, but it's not intended to be
19 an endurance exercise. If you need a break at any
20 time, just let me know.

21 A Okay.

22 Q Mr. Vinella, do you consider yourself
23 to be an expert in regulatory compliance for
24 broker dealers?

25 A I do. I look at the regulatory

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1 P. Vinella
2 compliance function, especially the 3-3
3 calculation, as being the result of the operations
4 and processing systems of a broker dealer, and I
5 am very familiar with that aspect, as well as the
6 data that goes into the calculations, as well as
7 the reporting requirements themselves.

8 Q Okay. Do you currently hold any
9 professional licenses?

10 A I do not.

11 Q Have you held professional licenses
12 in the past?

13 A No, I have not.

14 Q You never held a Series 27 license.

15 A No, I have not.

16 Q Your report says that you are a past
17 member of SIFMA, S-I-F-M-A; is that correct?

18 A I was the representative of
19 Wilmington Trust Company to SIFMA.

20 Q During which time, sir?

21 A That started in the beginning of
22 2007, continued through December of 2008.

23 Q Were you a member of a particular
24 division or group of SIFMA?

25 A I was the bank's overall

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1 P. Vinella
2 representative, and I was also the bank's
3 representative to the American Securitization
4 Forum. That is a committee within the -- within
5 SIFMA.

6 Q You were also a member of the
7 European Securitization Forum; is that correct?

8 A I was.

9 Q During what time period?

10 A That would have been the fall of
11 2006, I believe that started, and continued
12 through the time I left Wilmington Trust Conduit
13 Services in December of 2008.

14 MS. NEUHARDT: If it helps you to
15 look at your own CV on some of these
16 questions, you should feel free to do so.

17 Q Did any of these activities you
18 undertook when you were a member of the European
19 Securitization Forum relate to SEC Rule 15c3?

20 A They related in the sense that we
21 were involved with the same type of operations
22 that produced the data that goes into the
23 calculations, and we produced similar types of
24 calculations.

25 Q When you say we produced similar

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<p>1 P. Vinella</p> <p>2 types of calculations, can you be more specific?</p> <p>3 A Well, I was representing Wilmington</p> <p>4 Trust Conduit Service and Wilmington Trust</p> <p>5 Company, as the bank. The bank was a custodian,</p> <p>6 and was also a registrar transfer agent.</p> <p>7 Wilmington Trust Conduit Services</p> <p>8 provided the books and records for the</p> <p>9 securitizations that we were supporting. So we</p> <p>10 did the accounting. We did regulatory reporting.</p> <p>11 We did compliance reporting.</p> <p>12 Q Was Wilmington Trust a broker dealer?</p> <p>13 A It had a broker dealer. I mean, I</p> <p>14 did not operate within the broker dealer.</p> <p>15 Q Which part of Wilmington Trust did</p> <p>16 you operate within?</p> <p>17 A I was an owner of a joint venture</p> <p>18 that we created called Wilmington Trust Conduit</p> <p>19 Service, and that was specifically set up to</p> <p>20 support securitization such as CDOs,</p> <p>21 mortgage-backed securities, asset-backed</p> <p>22 commercial paper, conduits, SIV's.</p> <p>23 Q You also were a member of the Loan</p> <p>24 Syndication and Trading Association; is that</p> <p>25 correct?</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 P. Vinella</p> <p>2 A I was the representative for</p> <p>3 Wilmington Trust Conduit Services, yes.</p> <p>4 Q Is that during the same time period</p> <p>5 we discussed before?</p> <p>6 A During the same time period, yes.</p> <p>7 Q Fall of 2006 through the end of '08?</p> <p>8 A I believe fall of 2006 is when we</p> <p>9 became members.</p> <p>10 Q Did any of your activities as a</p> <p>11 member of that association relate to Rule 15c3?</p> <p>12 A In that case, no. That was</p> <p>13 specifically loan-to-loan processing.</p> <p>14 Q You were also a member of the</p> <p>15 International Swaps and Derivatives Association;</p> <p>16 is that correct?</p> <p>17 A I wasn't a member. I was the bank's</p> <p>18 representative to ISDA, and I was also a member of</p> <p>19 a committee that was involved in setting computer</p> <p>20 language standards for loans and derivatives on</p> <p>21 loans.</p> <p>22 Q In connection with any of your</p> <p>23 dealings with ISDA, did you have -- withdrawn.</p> <p>24 Let me start that again.</p> <p>25 In connection with your activities</p> <p>TSG Reporting - Worldwide 877-702-9580</p>
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<p>1 P. Vinella</p> <p>2 that you undertook in connection with ISDA, did</p> <p>3 any of those activities relate in any way to</p> <p>4 Rule 15c3?</p> <p>5 A No.</p> <p>6 Q You're currently a managing director</p> <p>7 at LECG?</p> <p>8 A I am.</p> <p>9 Q What does LECG stand for?</p> <p>10 A Now it's the actual name of the</p> <p>11 company. The origins, I believe, is Legal and</p> <p>12 Accounting Consulting Group, or Legal and Economic</p> <p>13 Consulting Group. I'm sorry.</p> <p>14 Q Can you tell me what LECG does,</p> <p>15 please?</p> <p>16 A LECG is a publicly traded company</p> <p>17 that provides a variety of advisory services,</p> <p>18 primarily to corporations, law firms, and</p> <p>19 government agencies.</p> <p>20 Q And also provides expert witness</p> <p>21 services too; correct?</p> <p>22 A That is part of the services, yes.</p> <p>23 Q What is your role as a managing</p> <p>24 director at LECG?</p> <p>25 A I'm considered one of the experts,</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 P. Vinella</p> <p>2 primarily in the area of financial services, and I</p> <p>3 provide consulting services, again, to</p> <p>4 corporations, law firms, and government agencies.</p> <p>5 So, I am one of the professionals within the firm.</p> <p>6 Q Could you turn to your report, sir,</p> <p>7 which is Exhibit 591, please.</p> <p>8 A Sure.</p> <p>9 Q In particular, if you could turn to</p> <p>10 your curriculum vitae, which is at page 28.</p> <p>11 Do you have it in front of you, sir?</p> <p>12 A I do.</p> <p>13 Q Did you write this CV, sir?</p> <p>14 A I wrote the basic outline of it. I</p> <p>15 believe it was proofread and checked by the</p> <p>16 company.</p> <p>17 Q You see that three lines down there</p> <p>18 is a sentence beginning, "His areas of expertise"?</p> <p>19 A Yes.</p> <p>20 Q Do you see that?</p> <p>21 Your CV says that your areas of</p> <p>22 expertise include trading and investment</p> <p>23 management, risk management, quantitative</p> <p>24 analysis, operations, trading and</p> <p>25 investment-related accounting, technology, in</p> <p>TSG Reporting - Worldwide 877-702-9580</p>

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<p>1 P. Vinella</p> <p>2 parentheses, included software development, trust</p> <p>3 administration, and fund administration.</p> <p>4 Do you see that?</p> <p>5 A Yes.</p> <p>6 Q Does that accurately represent your</p> <p>7 expertise, sir?</p> <p>8 A I would believe it's a reasonable</p> <p>9 synopsis of the areas of expertise that the firm</p> <p>10 and I felt would be the most applicable from a</p> <p>11 marketing point of view.</p> <p>12 Q It's correct that you don't list</p> <p>13 regulatory compliance as one of your areas of</p> <p>14 expertise there, sir?</p> <p>15 A That is true, that I don't list that.</p> <p>16 I also don't list operational risk, and I am</p> <p>17 considered an expert in that area. It's just that</p> <p>18 there is not a lot of opportunities for consulting</p> <p>19 services around that, so.</p> <p>20 Also, I would consider operations to</p> <p>21 be a major component of regulatory reporting, as</p> <p>22 is -- in trading management a major issue of that</p> <p>23 is maintaining regulatory reporting, so.</p> <p>24 I'm not saying this is an</p> <p>25 all-inclusive list. It's just again high-level</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 P. Vinella</p> <p>2 labels intended for more of a marketing purpose.</p> <p>3 Q Can you tell me, sir, in taking each</p> <p>4 of these areas in turn, how is it that they relate</p> <p>5 to SEC Rule 15c3?</p> <p>6 A Well, first of all, the SEC Rule 15c3</p> <p>7 is a rather broad rule. It's considered one of</p> <p>8 the core regulatory requirements for broker</p> <p>9 dealers. It involves, at a most fundamental</p> <p>10 level, the net capital rule, and as a trader, one</p> <p>11 of the most important aspects of trading is the</p> <p>12 use of your capital. In many cases you</p> <p>13 actually -- your compensation is based on return</p> <p>14 on capital.</p> <p>15 So, as a trading manager you are</p> <p>16 usually allocated capital, and how you use that</p> <p>17 capital is considered an important aspect of the</p> <p>18 business. So, you look at the trading management</p> <p>19 point of view, risk management point of view and</p> <p>20 the like.</p> <p>21 The correct use of capital is a key</p> <p>22 issue. If you are talking specifically around</p> <p>23 15c3-3, the customer protection rule, there are a</p> <p>24 number of components of that, again, that deal</p> <p>25 with trading, making sure that when you are</p> <p>TSG Reporting - Worldwide 877-702-9580</p>
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<p>1 P. Vinella</p> <p>2 trading, you are trading either customer assets on</p> <p>3 behalf of the customer or you are trading customer</p> <p>4 assets at the direction of the customer, if it's a</p> <p>5 directed account, and that you are not commingling</p> <p>6 those with the house assets.</p> <p>7 Operations, I get back to that.</p> <p>8 Every broker dealer I have ever been exposed to,</p> <p>9 the 15c3-3 calculation is actually produced in the</p> <p>10 operations processing systems. They may be</p> <p>11 aggregated later on at some direct reporting area,</p> <p>12 but usually the 3-3 calculation is based on</p> <p>13 results of processing trades, processing the</p> <p>14 corporate actions and principal and interest</p> <p>15 payments associated with positions, monitoring</p> <p>16 stock lending, margins on derivatives, margins in</p> <p>17 retail trading accounts.</p> <p>18 So, again, I believe that is the core</p> <p>19 aspect of regulatory reporting. It actually comes</p> <p>20 out of the operations systems.</p> <p>21 The trading and investment-related</p> <p>22 accounting, there are special FASB standards that</p> <p>23 are applied to that, as well as the valuation of</p> <p>24 assets. In the 3-3 calculation there actually is</p> <p>25 an issue around market value. Again, market</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 P. Vinella</p> <p>2 valuation usually is performed either by the front</p> <p>3 office area, the trading side or the operations</p> <p>4 area.</p> <p>5 Q I appreciate that answer, sir, and</p> <p>6 it's helpful, I think, in narrowing my questions.</p> <p>7 When I ask you about 15c3 today, my</p> <p>8 questions are, unless I specifically say</p> <p>9 otherwise, directed towards the Customer</p> <p>10 Protection Rule within that.</p> <p>11 A Okay.</p> <p>12 Q Do you understand that?</p> <p>13 A Yes.</p> <p>14 Q Would you say, sir, that your</p> <p>15 expertise is in the systems used to calculate the</p> <p>16 requirement under the Customer Protection Rule?</p> <p>17 A That is part of my expertise, yes.</p> <p>18 Q Do you have expertise in the actual</p> <p>19 computation of the reserve requirements under c3?</p> <p>20 A The actual computation is the</p> <p>21 addition of eight odd numbers and subtracting --</p> <p>22 of the sum of four to six odd numbers, depending</p> <p>23 on how you look at margin.</p> <p>24 So, from a mathematician's point of</p> <p>25 view, I would say I am an expert because we are</p> <p>TSG Reporting - Worldwide 877-702-9580</p>

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<p>1 P. Vinella</p> <p>2 dealing with arithmetic. I believe I am also an</p> <p>3 experts as to the actual components that were used</p> <p>4 in that calculation, how those numbers are arrived</p> <p>5 at.</p> <p>6 Q Do you consider yourself an expert in</p> <p>7 the interpretation and application of Rule 15c3?</p> <p>8 A Could you be a little more specific?</p> <p>9 Q Let's break it down. Do you consider</p> <p>10 yourself to be an expert in the interpretation of</p> <p>11 Rule 15c3?</p> <p>12 A When you mean interpretation, that's</p> <p>13 what I am asking, what in context, interpreting?</p> <p>14 Q Have you ever had to look at the rule</p> <p>15 and understand what it means and then apply that?</p> <p>16 A As setting up systems, that has been</p> <p>17 part of the functions, that we would look at that</p> <p>18 as being a functional requirement, and then we</p> <p>19 would look at the system to see if it was actually</p> <p>20 meeting that requirement.</p> <p>21 Q Okay. And in those circumstances,</p> <p>22 sir, were you considered the 15c3 expert on what</p> <p>23 the rule required, or were you the technology</p> <p>24 person who was following the direction of someone</p> <p>25 else in setting up that system?</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 P. Vinella</p> <p>2 MS. NEUHARDT: Objection, form.</p> <p>3 A We would have normally someone from</p> <p>4 the regulatory reporting group that would be there</p> <p>5 to insure that what we were incorporating in the</p> <p>6 code was consistent with what he would be</p> <p>7 expecting in terms of the data that was going into</p> <p>8 the calculation, as well as the end result of the</p> <p>9 calculation.</p> <p>10 Q You qualified your answer there, sir.</p> <p>11 You said you would normally have someone from the</p> <p>12 regulatory reporting group.</p> <p>13 A Yes.</p> <p>14 Q Are there circumstances in your</p> <p>15 experience where you have been the subject matter</p> <p>16 expert in the interpretation of the Customer</p> <p>17 Protection Rule under c3?</p> <p>18 MS. NEUHARDT: Objection to form.</p> <p>19 A When you say subject matter expert,</p> <p>20 again, if it's adding up cash balances, we</p> <p>21 wouldn't call in a reg reporting person for that.</p> <p>22 Normally what would happen is, we would ask the</p> <p>23 end user -- we wouldn't call it a subject matter</p> <p>24 expert, we would call it the end user -- what</p> <p>25 their specific requirements would be.</p> <p>TSG Reporting - Worldwide 877-702-9580</p>
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<p>1 P. Vinella</p> <p>2 In most cases, they would also be</p> <p>3 part of the testing group to insure that what was</p> <p>4 set up was actually producing the numbers that</p> <p>5 they thought they would be receiving. But again,</p> <p>6 a lot of the calculations are coming directly out</p> <p>7 of the processing systems, and the report itself</p> <p>8 is a relatively simple report.</p> <p>9 Q In your last answer, sir, who is the</p> <p>10 end user?</p> <p>11 A In most firms there is a group that</p> <p>12 is a regulatory reporting group. Sometimes there</p> <p>13 is a financial control group. Other times an</p> <p>14 operational control group. It depends how the</p> <p>15 broker dealer is set up.</p> <p>16 In some cases that area reports into</p> <p>17 the finance area. Sometimes it reports into</p> <p>18 regulatory compliance. There is no set rules on</p> <p>19 how it has to be done.</p> <p>20 But there usually is a group that is</p> <p>21 responsible for producing the reports and showing</p> <p>22 them to executive management as well as to the</p> <p>23 regulators.</p> <p>24 Q We will go through your experience in</p> <p>25 detail, sir. Before we do that, can you tell me</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 P. Vinella</p> <p>2 if you have ever been in your employment part of</p> <p>3 the regulatory reporting group that you have just</p> <p>4 described?</p> <p>5 A No, I have never been part of the</p> <p>6 regulatory reporting group. I should comment</p> <p>7 on -- at a broker dealer.</p> <p>8 Q Have you prepared any reserve formula</p> <p>9 calculations?</p> <p>10 A I have prepared calculations in</p> <p>11 connection with the testing of processing systems.</p> <p>12 Q For which firm, sir?</p> <p>13 A We were involved in a consultancy</p> <p>14 that I owned in a number of projects that were</p> <p>15 either starting de novo broker dealers for</p> <p>16 international banks or converting from one</p> <p>17 processing system to another processing system.</p> <p>18 So, in a de novo bank situation we</p> <p>19 helped Société Générale set up a U.S. broker</p> <p>20 dealer, as well as they acquired a U.S. broker</p> <p>21 dealer called Cowen and Company that had to be</p> <p>22 integrated.</p> <p>23 We also helped ABN Amro set up a</p> <p>24 local fixed-income broker dealer in New York.</p> <p>25 Both of those entailed identifying systems</p> <p>TSG Reporting - Worldwide 877-702-9580</p>

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<p>1 P. Vinella</p> <p>2 requirements, identifying systems, purchasing the</p> <p>3 systems, configuring the systems, and making sure</p> <p>4 that the systems produced the correct type of</p> <p>5 reports both for internal management as well as</p> <p>6 for regulatory reporting.</p> <p>7 In those cases, we did both the net</p> <p>8 capital rule as well as the 3-3 rule.</p> <p>9 For several other banks we actually</p> <p>10 helped them replace -- or broker dealers that were</p> <p>11 associated with banks -- we helped them replace</p> <p>12 their core processing systems, which included BNP</p> <p>13 Paribas Fixed Income, a group here in New York.</p> <p>14 We did that work also at Daiwa Securities.</p> <p>15 We were also involved in doing the</p> <p>16 due diligence when Bankers Trust bought NatWest's</p> <p>17 equity businesses, and one of the issues there, we</p> <p>18 had to do -- they had a lot of problems with the</p> <p>19 U.S. and British regulators at one point. We had</p> <p>20 to go in to show that the operations were now</p> <p>21 clean at the time of purchase, and how to</p> <p>22 integrate them into the Bankers Trust model.</p> <p>23 So, part of that was looking at their</p> <p>24 3-3 calculations and understanding did the books</p> <p>25 and records of NatWest markets actually confirm</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 P. Vinella</p> <p>2 the 3-3 reports, and how to get those assets into</p> <p>3 the broker dealer business.</p> <p>4 So, as consultancy, I have had a</p> <p>5 number of experiences with that.</p> <p>6 Also, if I can add, when I was at</p> <p>7 Smith Barney, I was in charge of integrating the</p> <p>8 fixed-income businesses of Shearson, and part of</p> <p>9 that work was bringing over tens of millions of</p> <p>10 dollars of customer assets from the Shearson legal</p> <p>11 entity into the Smith Barney broker dealer.</p> <p>12 I was responsible for making sure</p> <p>13 that all the regulatory reporting was being</p> <p>14 produced, that it was being produced accurately,</p> <p>15 and that when they asked us for transfer, that</p> <p>16 they were transferred cleanly.</p> <p>17 Q I would like to break those down --</p> <p>18 A Sure.</p> <p>19 Q -- a little bit and explore those in</p> <p>20 more detail.</p> <p>21 Turning first to Wilmington Trust</p> <p>22 Conduit Services. You were president and CEO of</p> <p>23 Wilmington Trust Conduit Services from</p> <p>24 September '06 through January '09?</p> <p>25 A I was.</p> <p>TSG Reporting - Worldwide 877-702-9580</p>
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<p>1 P. Vinella</p> <p>2 Q I think we have covered this before.</p> <p>3 I just want to be clear. Wilmington Trust is not</p> <p>4 a broker dealer; is that correct?</p> <p>5 A Wilmington Trust Company has a broker</p> <p>6 dealer.</p> <p>7 Q Wilmington Trust Conduit Services,</p> <p>8 the company which you were president and CEO of,</p> <p>9 was not a broker dealer?</p> <p>10 A We were not a broker dealer.</p> <p>11 Q Did you have any responsibility for</p> <p>12 the Wilmington Trust broker dealer?</p> <p>13 A No, I did not have any operational</p> <p>14 responsibilities. I was on the management</p> <p>15 committee of the bank, and as such I was involved</p> <p>16 in decisions on how much capital to give to the</p> <p>17 broker dealer, what type of assets they were</p> <p>18 allowed to take on from a proprietary trading</p> <p>19 point of view, which will was rather small.</p> <p>20 So I was involved in certain</p> <p>21 decisions involving the broker dealer, but I was</p> <p>22 not part of the day-to-day operations of the</p> <p>23 broker dealer.</p> <p>24 Q You didn't have any responsibilities</p> <p>25 for the compliance with the Customer Protection</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 P. Vinella</p> <p>2 Rule on behalf of the Wilmington broker dealer,</p> <p>3 did you?</p> <p>4 A If I can think for one second.</p> <p>5 Q Sure. Take your time.</p> <p>6 A I believe there were certain</p> <p>7 instances where we were acting as a custodial</p> <p>8 agent for the broker dealer, and I can think of</p> <p>9 two specific cases. One, we were doing money</p> <p>10 sweeps on behalf of our customers into the broker</p> <p>11 dealer, and part of that was maintaining</p> <p>12 segregated accounts both within the bank, so that</p> <p>13 the customer accounts were segregated and were</p> <p>14 actually put in trust accounts, and then when they</p> <p>15 were swept into the broker dealer for the mutual</p> <p>16 fund that they were investing in, those were also</p> <p>17 maintained in segregated accounts, and my group</p> <p>18 was responsible for making sure those were</p> <p>19 segregated from a reporting point back to the</p> <p>20 actual investor.</p> <p>21 So I think from that point of view,</p> <p>22 yes, I was involved in the Customer Protection</p> <p>23 Rule.</p> <p>24 Q Other than simply insuring that</p> <p>25 Wilmington Trust as a holder of assets of the</p> <p>TSG Reporting - Worldwide 877-702-9580</p>

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broker dealer were held in a seg account, did you have any other responsibility for compliance with the Customer Protection Rule in your time at the Wilmington Trust Conduit Services?

MS. NEUHARDT: Objection to form.

A That would be the extent of my experience with the Customer Protection Rule at Wilmington Trust Conduit Services.

Again, if I can say, the operations that we did are very consistent with the broker dealer and custodial agents. In fact, most broker dealers are not their own custodians. They go to a custodial bank. And in many cases we were doing that.

And the calculations that we were doing for the equivalent of a Customer Protection Rule were very similar to the 3-3 calculation.

Q How many customers did Wilmington Trust Conduit Services have?

MS. NEUHARDT: Objection. What do you mean by customer?

Q Do you understand the question, sir?

A I understand the question.

Q Okay.

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A It's easier for me to talk about the number of deals we were supporting than the number of customers, if I can put it that way.

We supported securitizations, in the sense that the securitization was our customer, not necessarily an entity that would have an operating function.

We, as I remember, had 17 deals that we were supporting, plus six hedge funds. So 17 securitizations and six hedge funds.

Q What was the average number of trades, sir, that Wilmington Trust Conduit Services cleared every day?

A In addition to the money sweeps, because we had money sweeps every single day -- we would take excess cash balances and sweep that into money funds. Some of those were again Wilmington Trust mutual funds. In some cases they were third-party mutual funds.

We probably averaged three to ten trades a day.

Q Do you know, sir, how that number of an average of three to ten trades per day cleared by Wilmington Trust Conduit Services compares to

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the average number of trades cleared a day by the LBI broker dealer in, say, 2009?

A I believe we heard that --

MS. NEUHARDT: 2009? Did you mean 2008?

MR. OXFORD: Sorry. 2008. Thank you.

A I was going to say, I think we didn't do anything.

I think when we talked to some of the operations staff at Lehman Brothers, they mentioned that there were over a couple million transactions per day.

Q Did Wilmington Trust Conduit Services provide any margin lending, sir?

A We did not extend credit as a bank to our customers. That was one of the things that Wilmington Trust Company did not do.

Q Okay. If I could turn to your next experience, chronologically going backwards. I believe you were the CEO of an organization called Toucan, T-O-U-C-A-N, Partners?

A Right.

Q Was that organization at some point

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also called PVA International?

A They were the same company, yes.

Q At what point did the name change?

A We set up a separate legal entity called Toucan Partners that was minority owned and women owned, primarily to qualify for World Bank projects.

It was the same offices with the same people, same owners, slightly different ownership structure, so, again, we could qualify for these World Bank projects.

Q Can you tell me, sir, what was your -- what were your primary responsibilities as CEO of Toucan Partners and/or PVA International?

A I was primarily responsible for managing projects as a consultancy. We didn't have a lot of overhead and management structure, so I was engaged probably 80 percent of my time on client projects. And the other majority of my time was based on sales.

There was a small, you know, amount set aside to do administrative tasks, such as accounting and HR type of work, and in the projects I primarily acted as either the lead

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<p>1 P. Vinella 2 business analyst and/or the chief, what we called 3 business architect, the person that would design 4 the solution to meet the client's needs. 5 Q Okay. Was it in your capacity as CEO 6 of Toucan Partners that you gained the experience 7 referenced in Exhibit B of your report for Bankers 8 Trust, Société Générale and Daiwa Securities? 9 Exhibit B starts at page 38. 10 A Okay. 11 All of the projects that you 12 mentioned were performed when I was at Toucan, 13 yes. 14 Q Is that the same for the work you 15 provided to ADP, Bank of America Securities, 16 JPMorgan Securities and ABN Amro? 17 A It was. 18 Q Okay. Thank you. 19 Which of your clients of Toucan 20 Partners were broker dealers? 21 A All of the projects that I listed 22 here were broker dealers, except for ADP, which 23 was a vendor system to broker dealers. We had a 24 number of other broker dealers as well as clients. 25 I would say 90 percent of our business was related TSG Reporting - Worldwide 877-702-9580</p>	<p>1 P. Vinella 2 to trading and investment management, and it 3 would -- it would fall 50/50 between a bank, and 4 primarily the treasury area of the bank or the 5 derivatives area of the bank, or the broker dealer 6 of a bank. 7 In some cases we just did work with 8 strict broker dealers, such as Merrill Lynch or 9 Lehman Brothers. I think we probably worked with 10 20 to 30 broker dealers over that period of ten 11 years. 12 Q Looking at Page 39 of your report, 13 sir, you say that in relation to Bankers Trust, 14 you played the lead role during the due diligence 15 and post-merger integration planning of Bankers 16 Trust's acquisition of NatWest's markets, equity 17 and derivatives operations from National 18 Westminster Bank. 19 A Yes. 20 Q Can you describe in a little more 21 detail what your personal role was on this 22 project. 23 A Actually, that was an interesting 24 project. I was at the time a consultant to 25 Bankers Trust. They had an organizational TSG Reporting - Worldwide 877-702-9580</p>
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<p>1 P. Vinella 2 structure where they had a head of operations and 3 technology for all of their major business lines. 4 I believe there was ten. 5 And they would have a monthly 6 committee meeting, and I was invited as an outside 7 member to that committee to bring in different 8 perspectives, and also, as they started to get 9 into lots of internal fighting, I would try to be 10 the calming influence. Most of the fighting was 11 around budgeting, so you can imagine it wasn't a 12 fun time. 13 During that engagement I was 14 contacted by the head of equities at Bankers 15 Trust, who mentioned that they were in the process 16 of buying Barclays' equity businesses, and he had 17 heard from Barclays that I had had a long 18 relationship with BZW, which was at that time the 19 investment bank of Barclays, and I helped set up 20 all the equity businesses for Barclays in Japan 21 and in Singapore, so I knew the people, I knew the 22 systems at Barclays. 23 So, they said can I get on a plane 24 that night because of that background. Three 25 hours later I was called to say the deal was dead, TSG Reporting - Worldwide 877-702-9580</p>	<p>1 P. Vinella 2 don't get on the plane. 3 A week later they said, we are buying 4 NatWest. Can you get on the plane again. 5 I said, I don't know anything about 6 NatWest. They said, you are the only expert we 7 have, so you are going. 8 So when I arrived in London, NatWest 9 at that point was so tired of people coming into 10 their organization, I mean they had six or seven 11 firms that were trying to buy it at that point in 12 time, that we, my partner and I were designated as 13 the only two non-Bankers Trust consultants they 14 would allow to come into the facility, and we were 15 the only ones, including Bankers Trust staff, that 16 they would allow to see the actual operations, the 17 books and records of the firm, all the regulatory 18 reports. 19 So, other than the revenue-generating 20 areas of NatWest -- we didn't interview, for 21 instance, the traders, and we didn't talk to the 22 sales staff -- my partner and I were the only 23 people that were allowed to go in and actually 24 interview all the staff, look at the systems and 25 the areas. TSG Reporting - Worldwide 877-702-9580</p>

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<p>1 P. Vinella</p> <p>2 And I ended up actually negotiating</p> <p>3 on behalf of Bankers Trust, wearing my Virgin</p> <p>4 Airlines sweats, by the way, and reduced the</p> <p>5 price, the acquisition price by about 150 million</p> <p>6 pounds, 120 to 150, I can't remember the exact</p> <p>7 number.</p> <p>8 Actually I'm a character in a book</p> <p>9 that was written about that specific issue because</p> <p>10 the British bankers didn't particularly like the</p> <p>11 fact that I was in my Virgin Airlines sweats, and</p> <p>12 the Americans thought it was absolutely hilarious,</p> <p>13 so.</p> <p>14 At that point we had to go in -- it</p> <p>15 was a \$500 million acquisition. We had to go in</p> <p>16 and look at every single position they had, every</p> <p>17 single open item, understand why the open items</p> <p>18 were there.</p> <p>19 We talked to people at the FSA to</p> <p>20 understand what the problems were that they saw</p> <p>21 six months earlier, when they put a sanction on</p> <p>22 the operations.</p> <p>23 And we came up with a remediation</p> <p>24 plan, as well as a plan to take the businesses and</p> <p>25 integrate that into Bankers Trust International.</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 P. Vinella</p> <p>2 Q In your report, sir, you say that the</p> <p>3 work involved a review of a number of things,</p> <p>4 including regulatory compliance reporting.</p> <p>5 A Yes.</p> <p>6 Q Was that something you were</p> <p>7 personally involved in, sir?</p> <p>8 A I was.</p> <p>9 Q Can you tell me about that, please.</p> <p>10 A We -- as I mentioned, NatWest had had</p> <p>11 some regulatory problems, I believe it was six to</p> <p>12 nine months earlier, due to a number of problems</p> <p>13 involving unreported large outstanding breaks, and</p> <p>14 if I use the term "breaks," by the way, it's a</p> <p>15 term of art within the industry. It usually just</p> <p>16 means that you have had a problem so you are</p> <p>17 trying to investigate.</p> <p>18 So it can be when you are reconciling</p> <p>19 your account against your depository, there is a</p> <p>20 reconciliation break. It could be the fact that</p> <p>21 you have outstanding trades that haven't settled.</p> <p>22 Those could be considered breaks as well.</p> <p>23 What we did was look at all the</p> <p>24 regulatory compliance reporting that was produced</p> <p>25 both for the FSA as well as for the SEC, and at</p> <p>TSG Reporting - Worldwide 877-702-9580</p>
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<p>1 P. Vinella</p> <p>2 that point it was NASD not FINRA. And we then</p> <p>3 went and looked at the operational reports that</p> <p>4 generated those compliance reports to show that</p> <p>5 the -- to see to what extent the reports had been</p> <p>6 manually updated or amended, versus the</p> <p>7 operational reports.</p> <p>8 And then we looked at the reports</p> <p>9 after the supposed fixes had been put in place to</p> <p>10 see were indeed those fixes actually taken care</p> <p>11 of. In several cases we found that actually the</p> <p>12 outstanding items weren't on the regulatory</p> <p>13 reports any longer, but they were actually still</p> <p>14 in the operating systems. Hence, the negotiations</p> <p>15 and the change in the acquisition price.</p> <p>16 Q The regulatory compliance reporting,</p> <p>17 sir, that you have just told me about, at least in</p> <p>18 part relates to the U.K. regulations; correct?</p> <p>19 A It does, yes.</p> <p>20 Q Does it, in fact, all relate to the</p> <p>21 U.K. regulations?</p> <p>22 A No. There was -- they also bought</p> <p>23 the operations of NatWest in the United States as</p> <p>24 well.</p> <p>25 Q Was NatWest a U.S. broker dealer?</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 P. Vinella</p> <p>2 A They had a U.S. broker dealer</p> <p>3 component. They maintained -- I believe at that</p> <p>4 point it was called Greenwich Capital, and it was</p> <p>5 primarily fixed income. They did have a small</p> <p>6 equity division, and that's what went over to</p> <p>7 Bankers Trust.</p> <p>8 The Greenwich Capital fixed-income</p> <p>9 businesses stayed with NatWest.</p> <p>10 Q How large was the U.S. broker dealer</p> <p>11 component of this transaction, sir?</p> <p>12 A It would have probably been about</p> <p>13 15 percent of the total business in terms of the</p> <p>14 amount of capital that was being used.</p> <p>15 Q And how many trades a day did the</p> <p>16 U.S. broker dealer clear?</p> <p>17 A I can't even remember that. I'm</p> <p>18 sorry.</p> <p>19 Q The regulatory compliance reporting</p> <p>20 that you just told me you were responsible for,</p> <p>21 did that include the Customer Protection Rule</p> <p>22 under c3?</p> <p>23 A Well, again, when you say c3 and you</p> <p>24 are saying Customer Protection Rule, it is</p> <p>25 slightly different to me.</p> <p>TSG Reporting - Worldwide 877-702-9580</p>

P. Vinella

But we looked primarily at the net capital rule issues, as opposed to customer rules.

Q Did you spend any time looking at the customer rules in the NatWest/Bankers Trust engagement?

A We looked at the segregated accounts. In Europe it's slightly different than the United States in terms of segregated accounts. We looked at segregated accounts here. We looked at segregated accounts in the U.K. We looked at the balances in them, and we insured that the assets were in segregated accounts at their custodians and depositories and at their commercial banks.

So we did validate that that was done and that the reports reflected the balances as they were reported.

Q In the answer to my last question, sir, were you talking about the U.K. rules as well as the U.S. rules?

A Both. Both entities were part of our purview.

Q Right. My question is a little narrower than your answer.

A Okay.

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P. Vinella

Q My question is directed only towards Rule 15c3-3, the Customer Protection Rule.

What I want to know is: What work did you do in connection with the U.S. broker dealer that Bankers Trust acquired from NatWest in connection with that U.S. rule?

A Again, we looked at their operational systems and evaluated the segregated accounts that were in the broker dealer system. We then also looked at the accounts that they maintained at the DTC to -- and these were all the DTC settling instruments, so we didn't have to look at Fed or other types of depositories.

And we also looked at their cash accounts that were maintained, and confirmed that they were segregated and that the balances that were reflected in the systems were also the same balances that were reflected in the depository.

Q In your testimony earlier, you talked about an end user.

A Yes.

Q Do you remember that testimony?

A Yes.

Q Who is the end user in the context of
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P. Vinella

the work you just told me about in your last answer?

A At that point, we weren't facing off with an end user. There was an acquisition team that Bankers Trust had put together and we were reporting into that group. That group happened to be led by a gentleman named Salia Newsy who was the head of compliance for Bankers Trust, which is kind of odd. Normally you have a business manager in charge of an acquisition. They had their head compliance officer who was in charge of it.

So I reported in to Sal on a weekly basis, and on a daily basis I reported in to the business manager for trading at Bankers Trust.

Q Were you the regulatory compliance expert in this transaction, sir? Again, my question goes narrowly to the U.S. rule, not the U.K. rules. And specifically, with respect to the Customer Protection Rule under Rule 15c3.

MS. NEUHARDT: Objection, form.

A I was, and my partner, were the only people that looked at the segregated accounts and the only ones that confirmed, to my knowledge, that those balances in those segregated accounts

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P. Vinella

were indeed what they were reported to be.

I don't know of anyone else within Bankers Trust that may have looked at it after us, but we were the only ones who were looking at it at that point in time.

Q Who was your partner?

A Jeanette Jin. She was my partner at Toucan Partners, and she was also my partner at Wilmington Trust Conduit Services.

Q And you reported the results of your work in connection with the Customer Protection Rule up to -- sorry, you are going to have to give me the name again.

A Salia Newsy.

Q Can you spell that for me?

A Actually, I can't.

Q S-A-L?

A Yeah, let's call him Sal.

I reported that with a number of other aspects around their operational systems, and I think it initially went in to a gentleman named Armand D'Accordo, who was the business manager, as I mentioned, of all the trading within the Bankers Trust.

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1 P. Vinella
2 **Q Are you familiar with something**
3 **called a KEOP report, sir?**
4 A No, I am not.
5 **Q Also known as a key operational**
6 **indicator report, sir.**
7 A I do not know of a report that is
8 called that, no.
9 **Q You were not responsible, I take it,**
10 **for filing a KEOP report with FINRA in connection**
11 **with your work for Bankers Trust?**
12 A FINRA did not exist when I did my
13 work at Bankers Trust. As I mentioned, that was
14 a -- there was NASDR, at that point was the
15 regulatory agency, as I remember.
16 **Q Were you responsible, sir, for filing**
17 **any reports to NASDR in connection with your work**
18 **for Bankers Trust?**
19 A No, I was not responsible.
20 **Q Who was responsible for that, sir?**
21 A I don't know who in Bankers Trust
22 would have been responsible for getting the
23 regulatory approval for the acquisition.
24 **Q My question was a little more**
25 **specific, sir.**
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1 **P. Vinella**
2 MS. NEUHARDT: It says 3-3, actually.
3 A Yes.
4 **Q Can you tell me, sir, in your work**
5 **for Société Générale, what aspects of the Rule**
6 **15c3 reserve formula you were responsible for?**
7 A We had to set up the relationships at
8 the DTC. At that point in time -- I am just going
9 to call it SG, so we don't have to say Société
10 Générale.
11 SG was not a member of the DTC at
12 that point, so they became a member. We had to
13 set up segregated accounts.
14 They did not do customer business in
15 the United States, so there was a large amount of
16 regulatory filings to get the broker dealer
17 license.
18 We also had to get systems that would
19 produce broker dealer regulatory reporting that
20 were different than the bank's normal reporting
21 systems that would go to the Federal Reserve.
22 In this case I worked directly with
23 the head of compliance, as well as the general
24 counsel of the bank.
25 **Q Who is head of compliance?**
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1 **P. Vinella**
2 **Were you responsible for filing any**
3 **regulatory reports with NASDR in connection with**
4 **the conversion of the broker dealer from NatWest**
5 **to Bankers Trust?**
6 A No, I did not face off with the
7 regulators.
8 **Q And you don't know who did?**
9 A No.
10 **Q Moving on to Société Générale. You**
11 **state that you acted as interim CIO leading the**
12 **formulation of a five-year strategic technology**
13 **plan, and then acting as an overall -- sorry, the**
14 **overall program manager and chief business analyst**
15 **in the bank's formation of an SEC registered**
16 **broker dealer and the post-merger integration of**
17 **U.S. broker dealer Cowen and Company.**
18 **Is that correct?**
19 A Yes.
20 **Q You go on to say, and this is**
21 **referring to page 40 of your report, "This work**
22 **required a detailed understanding of broker dealer**
23 **operations, including but not limited to customer**
24 **accounts, SEC Rule 15c3, and repos."**
25 **Is that correct?**
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1 **P. Vinella**
2 A The gentleman I reported in to
3 primarily was a gentleman named Governor Tipton.
4 His first name is Governor.
5 **Q He had ambitious parents.**
6 A It was difficult when we were dealing
7 with the Brits from Merrill Lynch, because they
8 kept calling him the Governor. I said his name is
9 Governor.
10 He was the gentleman I faced off with
11 pretty much on a weekly basis for the regulatory
12 components in terms of filing regulatory licenses
13 and also setting up the regulatory systems.
14 **Q Was he the head of compliance?**
15 A He was the -- he was the head lawyer
16 that -- that the head of compliance reported in
17 to.
18 And I also worked directly with the
19 Chief Operating Officer of the business unit that
20 was in charge of setting up the broker dealer, and
21 I also reported in to the general manager of the
22 U.S. branch.
23 So, those are the three people I
24 worked with most closely.
25 **Q Was Mr. Tipton responsible for the**
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1 **P. Vinella**
2 **regulatory compliance aspects of the systems that**
3 **you were setting up, sir?**

4 A He was, yes.

5 **Q Did you consider him to be the**
6 **subject matter expert in the area of the Customer**
7 **Protection Rule under c3?**

8 MS. NEUHARDT: Objection, form.

9 A No. I -- his background was more in
10 bank regulatory reporting as a broker dealer. He
11 had a gentleman, and I can't remember the
12 gentleman's name right now, who was the head of
13 compliance who had worked, I think it was at First
14 Boston, and understood the broker dealer business,
15 but he also understood bank regulatory, so that
16 would have be the gentleman that would have been
17 the subject matter expert.

18 **Q Just so we are clear, the subject**
19 **matter expert in your work for SG in the area of**
20 **Customer Protection Rule 15c3 was not you, it was**
21 **someone else; correct?**

22 MS. NEUHARDT: Objection, that's
23 mischaracterizing his testimony.

24 A There was a gentleman that ran
25 compliance that I was responsible for delivering
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1 P. Vinella
2 requirements. He would have his requirements and
3 we would do our best to insure that what we were
4 doing met those requirements. Yes.

5 **Q Right. So, it wasn't you or your**
6 **team from Toucan, sir, who were defining the**
7 **requirements for the regulatory reporting system**
8 **that you were setting up, it was someone else; is**
9 **that correct?**

10 A Well, again, I think you are
11 bifurcating this in a way that is not how it works
12 in practice. All of the operations of a broker
13 dealer feed into the 3-3 calculation. So, the
14 head of compliance, which is -- I'm sorry, I can't
15 remember the gentleman's name. He didn't know
16 anything about how to settle and clear a trade.
17 He understood what cash balances in customer
18 accounts were, but he didn't understand what
19 systems were necessary to provide that
20 information, how to set those systems up.

21 So, we didn't rely on him to say,
22 okay, if you are going to be looking at stock loan
23 of customer assets and then rehypothecate it, this
24 is the way you account for it. He didn't
25 understand it. He just knew there was a line
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1 P. Vinella
2 number that said that someone has to fill in that
3 and there were operational staff behind it that
4 could demonstrate those numbers had been filled in
5 correctly.

6 So that was what I was responsible
7 for, putting together the entire, we call it
8 business architecture, so when data comes into the
9 environment, all the processing systems that had
10 to handle it and then the different various
11 reporting systems, whether those were operational
12 reporting systems, regulatory reporting systems,
13 financial reporting systems, how those were fed
14 in.

15 So, his requirement was I need a
16 report in this format that has this data, and then
17 our responsibility was to go and say, okay, where
18 do you get that data from and how does it feed
19 into it.

20 So I think it's really important when
21 you look at the 3-3 calculation, it's the end
22 results of the processing of the 2 million trades
23 a day that we talked about earlier.

24 I think it's also important, if I
25 look at Mr. McIsaac's report, everything he's
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1 P. Vinella
2 talking about are operational problems. He's not
3 talking about addition problems in the
4 calculation. What he's talking about is
5 securities that weren't kept in good control
6 locations or assets that had been seized at a
7 custodial bank or a third party.

8 So, those are operational issues that
9 would be not resolved by regulatory reporting but
10 someone in the operations area and someone going
11 into the systems and understanding that.

12 **Q We will come to Mr. McIsaac's report**
13 **in a little while.**

14 A Sure.

15 **Q Just while you raised that, the**
16 **operational problems that you have just described,**
17 **are those common in your experience?**

18 A Well, in operations, every day there
19 is an error, and the reason there is errors is for
20 a variety of reasons. One, you are dealing with
21 usually third parties, and trade tickets could be
22 incorrectly written, instructions and delivery
23 could be incorrectly written, there could be a
24 problem where you are expecting something to come
25 in and it doesn't come in, therefore you can't

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<p>1 P. Vinella 2 deliver it. 3 So, the nature of operations is 4 solving problem, and every operations I have ever 5 been involved with, there is a group that's 6 usually called investigations, and they are in 7 charge of handling it. 8 So, in general, operations are 9 dealing with solving problems as much as 10 processing. 11 The week that Lehman Brothers -- the 12 week preceding Lehman Brothers' liquidation, a lot 13 of things that were not common happened in terms 14 of seizing of assets and things like that, and at 15 Wilmington Trust we actually had a lot of business 16 with Lehman Brothers, so I understand from a 17 personal point of view that Citibank bought the -- 18 not the broker dealer assets, but other affiliates 19 of Lehman Brothers, they actually seized assets 20 that belonged to us, and we had to get it back 21 from Citibank. 22 So, that week there were some things 23 that would not be normally in daily operations, 24 but daily operations, yes, you have lots of 25 problems. TSG Reporting - Worldwide 877-702-9580</p>	<p>1 P. Vinella 2 Q Getting back to your experience, sir, 3 and turning to Daiwa Securities. It's D-A-I-W-A. 4 Down on page 40 of your report, you 5 say you played a lead advisory role on several 6 projects designed to expand Daiwa Securities' 7 services to its U.S. and Japanese clients, 8 including implementation of a new back office 9 processing system, the launch of a de novo prime 10 broker operation, and the evaluation of 11 establishing a managed account business for high 12 net worth individuals. 13 Is that correct? 14 A Yes. 15 Q Did your work at Daiwa Securities 16 involve performing any Rule 15c3 reserve 17 calculations? 18 A We set up the systems that fed the 19 3-3 calculations. In the case of the broker 20 dealer operation, they set that up as completely 21 separate from the broker dealer operation, so it 22 had separate staff, separate systems, separate 23 accounts at DTC. 24 And part of that was making sure that 25 everything was set up so that we could, again, TSG Reporting - Worldwide 877-702-9580</p>
Page 52	Page 53
<p>1 P. Vinella 2 guarantee the accounts had been correctly 3 segregated and that they would map into the reg 4 reporting system. 5 Q Who was responsible for the reg 6 reporting system at Daiwa, sir? 7 A At that point we were dealing with 8 the Chief Operating Officer, named Rich Beggs, and 9 we had two Japanese gentlemen, who I can't 10 remember their names, that came in and oversaw the 11 work product that we were doing. 12 At that point I wasn't dealing with 13 their internal compliance officer. I was just 14 dealing with Rich Beggs, and he would face off 15 with who he needed to face off with. 16 Q Did Mr. Beggs give you -- withdrawn. 17 Did Mr. Beggs give you instructions 18 as to his requirements under the Customer 19 Protection Rule? 20 A In this case, the system that the 21 broker dealer went with actually had a package 22 that produced the 3-3 calculation, so once you set 23 up all the calculations -- all the accounts and 24 identified which accounts were customer accounts 25 and which accounts weren't, it would then TSG Reporting - Worldwide 877-702-9580</p>	<p>1 P. Vinella 2 automatically just populate the report. 3 So, I don't know that there were any 4 specific requirements beyond that, that aspect of 5 it. So, we just made sure that the accounts were 6 set up and that they were -- when a trade ticket 7 was entered, you would -- if you put in the 8 customer account, then the rest of the processing 9 would be rather transparent. 10 Q So if I understand your testimony 11 correctly, Daiwa Securities purchased an 12 off-the-shelf software package that included 13 within that software to calculate the customer 14 protection requirements under c3? 15 A Right. 16 Q Okay. Turning to ADP. You state 17 that you played a lead advisory role in several 18 projects to expand ADP's presence in the 19 fixed-income markets. 20 Can you tell me if that experience 21 has anything to do with SEC Rule 15c3, and in 22 particular the Customer Protection Rules? 23 A It did. I was actually recruited to 24 ADP to be the president of a new division they 25 were starting around fixed-income processing. The TSG Reporting - Worldwide 877-702-9580</p>

1 P. Vinella
2 majority of their brokerage processing at that
3 point was domestic equities and listed
4 derivatives, and they wanted to get into the
5 fixed-income market.

6 So the first thing we did was write
7 down what the requirements were to support
8 primarily broker dealer businesses dealing with
9 fixed income, as well as banks that might be using
10 it in the treasury area. Then as part of that
11 business analysis, we came up with a set of
12 requirements that a system or systems would have
13 to have, one of which was the reg reporting. It
14 wasn't specifically the 3-3. It was around all
15 the broker dealer regulatory reporting.

16 And the question was, would we take
17 those fixed-income systems that they were looking
18 at acquiring, or I should say I wrote the business
19 plan, and I identified the possible acquisition
20 targets, whether that made sense to put it into
21 the ADP BPS brokerage system and have that do all
22 the regulatory reporting, or should we have a
23 separate regulatory reporting environment just for
24 the fixed-income businesses.

25 At that point, we identified, I
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1 P. Vinella
2 think, in the neighborhood of nine to ten
3 acquisition candidates, and we went out and
4 evaluated the businesses that -- you know, that
5 they had as well as the technology, and part of
6 that again was to understand how robust the
7 regulatory reporting was and how much we could
8 rely on it.

9 The decision was eventually made to
10 purchase a system that was called ICI or a
11 business called ICI and to have ICI do all the
12 regulatory reporting independently of BPS, so if
13 you were a BPS client and a ICI client, you got
14 two 3-3 calculations out of that, as well as two
15 net capital calculations, and then you would, in a
16 spreadsheet primarily, add those two together to
17 get an overall view of fixed income and equity
18 businesses.

19 It didn't seem to be practical to try
20 to put that into the ADP systems, since it didn't
21 really handle -- because you couldn't go backwards
22 and show that the numbers actually tied out to the
23 positions, since the positions wouldn't be
24 maintained at ADP.

25 **Q You said at the start of that answer,**
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1 P. Vinella
2 **sir, that you were recruited to be president of a**
3 **new division of ADP?**

4 A I was.

5 **Q So while you were at -- who were you**
6 **employed by at that time?**

7 A I was at Smith Barney at that point.

8 **Q I think I must have misunderstood**
9 **your earlier testimony. I thought the ADP work**
10 **you did while you were a consultant and employed**
11 **by Toucan.**

12 A That actually is correct. This is
13 how Toucan started. When I was recruited to ADP,
14 the package they offered me was to get 10 percent
15 of the revenues of the business. When I asked
16 them how many -- what kind of revenues they had,
17 they said zero. We want you to start it.

18 So I said 10 percent is not very
19 good. I said I was willing to leave with the
20 package I was getting at Smith Barney, at which
21 point they told me I would be getting paid more
22 than the CEO and chairman of ADP, and that the
23 easiest way they could give me the package I
24 needed was if I was a consultant as opposed to an
25 employee. That would be very easy.

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1 P. Vinella
2 So, my first two years of PVA/Toucan,
3 basically my only client was ADP.

4 When we finished the analysis, I had
5 so much demand on the consulting business, it
6 didn't make sense to stay at ADP, because I could
7 make more money being a consultant, and quite
8 frankly, it was a lot more time.

9 So that's how PVA and Toucan Partners
10 started.

11 **Q In your work for ADP, sir, that you**
12 **have just told me about, who was the subject**
13 **matter expert on the Customer Protection Rule**
14 **under 15c3?**

15 MS. NEUHARDT: Objection, form.

16 A There, again, you are talking back so
17 far, I can't remember the gentleman's name. There
18 was a gentleman within ADP who was considered to
19 be the BPS expert, and again, a large part of BPS
20 was producing regulatory reports, so, we worked
21 with him a lot to understand -- again, we were
22 looking at the fixed-income systems -- could they
23 go in the ADP regulatory reporting.

24 So we relied on him specifically on
25 how to feed the data into the BPS system. The
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1 P. Vinella
2 package that we ended up going with already had a
3 3-3 calculation in it. We didn't rely on him. We
4 just validated with him the buckets that the 3-3
5 calculation relies on were being filled in
6 correctly from the operational side of the
7 processing system.

8 MR. OXFORD: Okay. We have been
9 going about an hour. It might be a good
10 time to take five minutes.

11 THE WITNESS: Sure.

12 (Recess taken.)

13 BY MR. OXFORD:

14 Q Again, on page 40 of your report,
15 Mr. Vinella, you discuss your role with respect to
16 Bank of America Securities. Do you see that?

17 A Yes.

18 Q Were you employed by Toucan at that
19 time, sir?

20 A I was.

21 Q What time frame are we talking about,
22 when you did this work for Bank of America?

23 A I believe this was 2004.

24 Q You state that the work you did
25 included performing extensive interviews with

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1 P. Vinella
2 numerous operations staff defining thousands of
3 requirements, including customer accounts and SEC
4 Rule 15c3 requirements.

5 Do you see that?

6 A Yes.

7 Q Can you tell me about the work you
8 did in defining SEC Rule 15c3 requirements for
9 Bank of America?

10 A At this point in time, we had
11 developed a rather rich methodology that had
12 captured requirements from dozens of other
13 projects, and we had a way of identifying the
14 types of products that would be processed, whether
15 those were equity products or fixed-income
16 products, whether those would be traded under a
17 broker dealer license or a bank license, whether
18 those would be the types of requirements in terms
19 of the users, whether those would be traders,
20 salesmen, operations, and as a result, we were
21 able to generate many of these requirements
22 without relying on the Bank of America staff.

23 So, we first put that together. We
24 then validated the -- they had picked a vendor
25 package they wanted to use. They called us in to

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1 P. Vinella
2 validate that selection. So we used those
3 requirements, which included the 3-3 calculations,
4 as well as the segregated account requirements,
5 and then the other aspects of the 3-3 calculation
6 that would -- the components of those calculations
7 that were based on the operations.

8 We would validate that those -- there
9 was two vendor packages we were looking at, that
10 either one of those packages actually met those
11 requirements. So most of the requirements were
12 generated from this kind of methodology that we
13 had.

14 We then also worked with the
15 operations areas to make sure that the
16 requirements that we had were ones that they felt
17 comfortable with.

18 Q Which off-the-shelf vendor systems
19 was Bank of America considering?

20 A The primary candidate was a company
21 with the odd name of Shadow Financials, and I
22 think that is probably why the executives were a
23 little worried about the selection. And that was
24 a spinoff of a broker dealer called Refco. And
25 they believed that that system could replace the

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1 P. Vinella
2 ADP system. Bank of America had been trying to
3 replace the ADP BPS system for about ten years at
4 that point.

5 There was a second system, developed
6 by Solomon Brothers, and the new head of equity
7 trading that had come over to Bank of America
8 Securities had come from Solomon Brothers, and
9 they were thinking about trying to buy that
10 package from -- at that point it would have been
11 Citigroup.

12 Q Is it correct, sir, that you were
13 asked by Bank of America to validate the 15c3-3
14 portion of those two vendor packages?

15 A That was part of my assignment, was
16 to show that it could handle customer as well as
17 proprietary trading, and that, again, the
18 segregated accounts and the activity around those
19 segregated accounts would map directly to the
20 regulatory reporting requirements.

21 Q And who -- withdrawn.

22 Were you the subject matter expert on
23 15c3, in particular the Customer Protection Rule?

24 MS. NEUHARDT: Objection.

25 Q In your work for Bank of America?

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<p>1 P. Vinella</p> <p>2 MS. NEUHARDT: Objection to form.</p> <p>3 A At that point, again, when you look</p> <p>4 at the entire flow of what goes into that</p> <p>5 calculation, I was the, the lead, you know,</p> <p>6 business architect, as we call it. How all the</p> <p>7 operational information flows into these various</p> <p>8 reporting systems, that's what I was responsible</p> <p>9 for.</p> <p>10 Q If you had a question about the</p> <p>11 application of the Customer Protection Rule, who</p> <p>12 would you go to, sir?</p> <p>13 A In this case, we didn't have anyone</p> <p>14 in the compliance group that was part of the</p> <p>15 vendor selection process. We did ask various</p> <p>16 people in the operations area that were</p> <p>17 responsible for showing that the numbers that were</p> <p>18 being input into the calculation -- again, there</p> <p>19 is eight credits and I think six debits in the</p> <p>20 calculation, and you add the credits together and</p> <p>21 you subtract the debits, so it's a relatively</p> <p>22 simple calculation.</p> <p>23 But the operations areas that were --</p> <p>24 the head of margin was part of the group, and</p> <p>25 margining is a major part of the 3-3 calculation,</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 P. Vinella</p> <p>2 and we had the head of stock loan operations was</p> <p>3 part of that group, and stock lending is a major</p> <p>4 part of the calculation.</p> <p>5 So there were people there that we</p> <p>6 would rely on, but we relied on -- and I think</p> <p>7 this is consistent with many of the other</p> <p>8 opportunities here. We relied on them not as the</p> <p>9 people telling us how the systems worked, but they</p> <p>10 were the ones that were going to use it and they</p> <p>11 wanted to have certain screens, they wanted</p> <p>12 certain reports.</p> <p>13 So, we weren't going there and saying</p> <p>14 how do you calculate margin requirements. We knew</p> <p>15 how to do that. We were saying, when you see the</p> <p>16 margin requirements, how would you like to see it</p> <p>17 broken down. Would you like to see it broken down</p> <p>18 by day, by security type? Do you want to see a</p> <p>19 variance in market value?</p> <p>20 So, a lot of the requirements were</p> <p>21 dealing with how they wanted to use the system as</p> <p>22 opposed to how the computations would be done.</p> <p>23 They'd rely on us for the.</p> <p>24 Q And the end user of the package that</p> <p>25 you just described would include the regulatory</p> <p>TSG Reporting - Worldwide 877-702-9580</p>
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<p>1 P. Vinella</p> <p>2 compliance function of Bank of America, correct?</p> <p>3 A I would assume they were part of this</p> <p>4 dealer group, yes. Again, they were not part of</p> <p>5 the selection committee. The selection committee</p> <p>6 was almost entirely operations staff.</p> <p>7 Q Did you -- did you interview members</p> <p>8 of Bank of America who were responsible for making</p> <p>9 the 15c3-3 reserve calculation?</p> <p>10 A We talked to the people that produced</p> <p>11 the components of the 3-3 calculation, not</p> <p>12 necessarily the final addition and subtraction of</p> <p>13 the numbers.</p> <p>14 Again, the operations staff was</p> <p>15 responsible for showing that the free cash</p> <p>16 balances that were input into the calculation were</p> <p>17 actually the right free cash balances. The reg</p> <p>18 reporting group doesn't know if that's true or</p> <p>19 not. They would have to talk to the operations</p> <p>20 area.</p> <p>21 So, the operations area was making</p> <p>22 sure that those calculations were being performed</p> <p>23 correctly. Again, it was more from, were they</p> <p>24 getting the types of reports and screens that</p> <p>25 would allow them to easily validate that those</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 P. Vinella</p> <p>2 numbers were there, plus help them during their</p> <p>3 daily operations, whether it's selling, clearing</p> <p>4 trades, moving cash, reconciling cash.</p> <p>5 So, those were the kinds of things we</p> <p>6 really focused on more, how they would interact</p> <p>7 with the system as opposed to how the system</p> <p>8 itself would be designed.</p> <p>9 Q Turning next to JPMorgan Securities,</p> <p>10 again, was the work you did for JPMorgan something</p> <p>11 you did while you were employed by Toucan?</p> <p>12 A Yes, it was.</p> <p>13 Q What time period did this work take</p> <p>14 place in?</p> <p>15 A This was probably 1999, 2000. I</p> <p>16 think it was before the millennium, so I think it</p> <p>17 was 1999.</p> <p>18 Q You state, sir, that you evaluated.</p> <p>19 JPMorgan Securities' business plan and operational</p> <p>20 design for the launch of the de novo prime broker</p> <p>21 operation; is that correct?</p> <p>22 A Yes.</p> <p>23 Q Did that prime broker operation</p> <p>24 actually become operational?</p> <p>25 A I don't know if that specific one</p> <p>TSG Reporting - Worldwide 877-702-9580</p>

1 P. Vinella
2 did. They did launch one shortly thereafter.
3 Part of our analysis was that they weren't going
4 to be able to rely on the broker dealer
5 environment primarily, because it didn't have good
6 segregation rules in the accounts set up, so that
7 if they were going to launch it, they had to do it
8 as a separate operation, which is consistent with
9 the way most prime broker operations are set up.

10 But I was not involved in the actual
11 launch of that business. I was really again
12 looking at the business plan they came up with,
13 the operational design, and seeing if that could
14 support the businesses they were talking about
15 supporting.

16 **Q As a prime broker operation, would**
17 **this contemplated entity have to comply with SEC**
18 **Rule 15c3?**

19 A It would, because they were going to
20 be the -- custodizing customer assets. One of the
21 major issues around a prime broker's operation is
22 the basically securities lending and the extension
23 of credit to the prime brokers, which is actually
24 different than the margin account requirements for
25 retail brokers.

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1 P. Vinella
2 So, there is usually much more, there
3 is much more processing associated with computing
4 margin accounts, margin requirements, and there is
5 also a direct link to your securities lending
6 operation. So, we did a lot of work in
7 understanding margin requirements, segregated
8 accounts, so they wouldn't get -- when they were
9 doing stock lending, that the rehypothecation was
10 done correctly.

11 That was a large part of the design,
12 was evaluating the current JPMorgan systems at
13 that time and seeing if they could handle these
14 new margin requirements, as well as the
15 segregation and sec lending or securities lending.

16 **Q This contemplated prime broker would**
17 **have to comply with the Customer Protection Rule?**

18 A Yes. It would, it would have.

19 **Q And it would have had to make a**
20 **reserve requirement calculation under the Customer**
21 **Protection Rules; is that correct?**

22 A It would have had to feed that
23 calculation, yes.

24 **Q But it wouldn't actually have**
25 **responsibility for -- it wouldn't be obliged**

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1 P. Vinella
2 **rather or required under the Customer Protection**
3 **Rules to make that reserve calculation every week;**
4 **is that correct?**

5 A If it was part of the broker dealer
6 operation as -- operating under that license, it
7 wouldn't have a separate requirement. It would be
8 part of the broker dealer's requirement.

9 In general, the way these work is the
10 various business units, and it's primarily because
11 of the processing systems, they usually produce
12 their own subset of a 3-3 calculation, and those
13 are all added up together, to produce the broker
14 dealer-wide 3-3 calculation.

15 So, they would have been -- this
16 operation would have been part of the 3-3
17 calculation. How that was actually computed
18 was -- now can vary from organization to
19 organization.

20 **Q Were you the 15c3-3 expert on the**
21 **team that was working on this assignment for**
22 **JPMorgan Securities?**

23 MS. NEUHARDT: Objection to form.

24 A I was the one that was asked could
25 this meet the requirements of the business in

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1 P. Vinella
2 terms of volumes and the like, and also if it met
3 the regulatory requirements.

4 I was the one that was saying, you
5 know, can this produce the 3-3 calculation
6 accurately, does it support segregated accounts,
7 will there be the right Chinese wall between the
8 proprietary trading of JPMorgan Securities and the
9 prime broker's operation, the customers of the
10 prime broker's operation.

11 **Q Did you report in to someone with**
12 **regulatory responsibility at JPMorgan?**

13 A I reported directly to the business
14 sponsor, who was trying to start the prime broker
15 operation, as well as a gentleman from Ernst &
16 Young who they had hired to kind of oversee the
17 whole launch of the prime brokerage businesses.

18 MR. OXFORD: Can you just read my
19 question back, please.

20 (Record read.)

21 A And I mentioned I reported in to the
22 business sponsor who was trying to launch that
23 business, as well as an Ernst & Young consultant
24 who they had hired to help launch the prime
25 brokerage business.

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P. Vinella

The answer is, those are the people I reported in to.

Q My question is a little more specific. Did they have regulatory reporting responsibility at JPMorgan?

A I don't know if they did or not.

Q The next item you have in your list of experience, sir, is ABN Amro Securities.

A Yes.

Q You state that you played a lead advisory role on several projects related to the founding of a new global fixed-income investment bank for ABN Amro. Do you see that?

A Yes.

Q And that this work involved the integration of several U.S. -- sorry -- several affiliated U.S. and offshore broker dealers, and the implementation of a new back office operational system which required a detailed understanding of broker dealer operations. Is that right?

A Yes.

Q Can you describe in a little more detail what your role was in connection with this

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P. Vinella

project, particularly with respect to Rule 15c3 and the Customer Protection Rule?

A Some gentleman that I had done extensive work with at BZW or Barclay's de Zoete Wedd had been recruited by ABN Amro to start this new business unit, and they asked me to come over to help design, again, all the operational duties as well as what systems would be required to support that.

ABN Amro actually had a U.S. broker dealer that was called Chicago Corp. that was located in Chicago, Illinois, and was actually very tightly linked to LaSalle Bank, which ABN Amro had recently purchased. So, a part of the work was to evaluate what Chicago Corp. had in the way of processing capabilities and operations, and decide whether it was worthwhile to try to grow that to support this new global business or whether it was preferable to start a new operation in New York.

The decision was made to actually start a new operation in New York to support certain aspects of the business and to leverage the Chicago Corp. operations for other parts of TSG Reporting - Worldwide 877-702-9580

P. Vinella

the business, and the new processing system they picked was the ICI package, that ADP had purchased that company.

So, we were involved in making sure again that the Chicago Corp. processing and the New York processing was integrated, and that they could produce integrated financial and regulatory reports. So, part of that process, you know, part of my mandate was to insure that, again, the financial and regulatory reporting was being performed correctly across these two different processing environments.

Q And how did you go about insuring that the financial and the regulatory reporting was being performed correctly across these two environments?

A What we did was we put a test scenario together that showed how each of them worked independently and then we showed how they integrated, and it's not -- some of the financial reports are much more complicated, especially where you're dealing with risk reports. You can't just add them together like the 3-3. There is some -- a mathematician would call it nonlinear

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P. Vinella

aspects to these calculations. You have to be more careful than simply adding the numbers together.

We put a test scenario together that would show how they worked independently and how we expected them to work together and produced those reports.

Q And who did you report in to, sir?

A I reported in to the chief operating officer, a gentleman named Irv Cohen.

Q Did Mr. Cohen have regulatory compliance and reporting obligations?

A That reported in to him, yes.

Q Did you actually perform any reserve calculation under Rule 15c3 for ABN Amro?

A For these test scenarios, yes.

Q Other than the test scenarios, did you actually perform any live 15c3 calculations?

A Once we set all the systems up, they were performing them. Again, I think one of the -- it might be helpful to describe again how a 3-3 calculation is performed.

There is not a separate group within regulatory reporting that runs a computer

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1 P. Vinella
2 application that they are responsible for that
3 produce these numbers. These are all numbers that
4 are actually produced in the operational area, and
5 in fact, many times the entire 3-3 calculation as
6 well as the net capital calculation is performed
7 in these systems and they are reconciled by
8 operations people.

9 Sometimes there might be someone in
10 financial control that insures that the numbers
11 tie out to the cash balances. Once that's been
12 performed, it usually goes to a regulatory
13 reporting group who is then responsible for facing
14 off with regulators if there is a problem.

15 So, they are not performing
16 calculations. Normally what they are doing is
17 looking at the results of these calculations, and
18 if there is a problem, first of all, understanding
19 what the magnitude of the problem is, and then
20 escalating it usually to a regulator as well as
21 the general counsel's office.

22 So, reg reporting isn't performing
23 calculations as much as being responsible for
24 applying the results of those reports.

25 **Q In your expertise, sir, who is, who**
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1 **P. Vinella**
2 **is typically within a broker dealer responsible**
3 **for insuring that the c3 calculation, in**
4 **particular the reserve calculation, is done**
5 **correctly?**

6 A It's -- my experience has been that
7 it's usually the CFO, because they are responsible
8 primarily for the financial reporting, and most
9 places also would have the regulatory reporting
10 responsibility there as well.

11 In some cases it's slightly
12 different. For instance, at Société Générale,
13 that went through the general counsel's office.
14 They thought compliance was really more
15 appropriate in that area.

16 **Q Would you agree with me, sir, that**
17 **the regulatory compliance and reporting function**
18 **of a broker dealer is responsible not simply for**
19 **interfacing with regulators but also for insuring**
20 **that there are systems in place and that the**
21 **calculations under c3 and in particular the**
22 **Customer Protection Rule are performed correctly?**

23 MS. NEUHARDT: Objection to form.

24 A That actually is an interesting
25 question, because I am thinking back. I can't
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1 P. Vinella
2 remember very many instances where regulatory
3 reporting signed off that a system had been
4 implemented correctly.

5 In the applications that I have
6 listed here where they have had a steering
7 committee and a group that was responsible for
8 saying yes, it's ready to go, I don't remember
9 that compliance was part of the testing team.
10 Now, they may have been behind the scenes, part of
11 a committee that approved things.

12 My experience has been it was the
13 operations area that would sign off that all of
14 the operations were being performed correctly,
15 that the numbers that would be used in the 3-3
16 calculation were done correctly, and in nearly
17 every case I had, the CFO was on the acceptance
18 committee, and they would say, okay. And again,
19 usually because the compliance would report in to
20 them.

21 So, I can't think of a time where the
22 compliance group had to sign off that yes, these
23 calculations were being done correctly.

24 If we -- in a couple of cases we
25 built specific applications for the reg reporting
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1 P. Vinella
2 group, and in those cases they would sign off that
3 those operations had been -- and usually there
4 were screened the way they wanted it to sort
5 through data, that they would say that had been
6 done correctly.

7 There is one other point I think that
8 is worthwhile making.

9 In general, the 3-3 calculation is
10 not considered as important as the overall net
11 capital rule. Most people think of the 3-3 as
12 part of that overall requirement, and in order to
13 get the net capital rule correct, you have to do
14 all that operations as well.

15 Where the extra onus on the 3-3
16 component is, is making sure that you still have
17 good control locations and you are still
18 accounting for things correctly, in the sense that
19 if you have done the net capital rule correctly
20 and you still maintain good control locations, the
21 3-3 would be relatively straightforward.

22 So, in most of the engagements that I
23 was involved in, there was a very strong emphasis
24 on the net capital rule being correct. In most
25 broker dealers, that is performed daily, where the
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<p>1 P. Vinella 2 3-3 calculation is done weekly. 3 There is a little bit of difference 4 of emphasis there. 5 Q If you can leave out of your answer, 6 sir, because you have already addressed it, that 7 setting up and designing, initially implementing, 8 financial systems. 9 Is it your experience, sir, that on a 10 day-to-day, week-to-week basis, it's the 11 compliance and regulatory reporting function 12 within a broker dealer that is responsible for 13 ensuring that a c3 calculation, particularly the 14 Customer Protection Rules, are properly applied? 15 MS. NEUHARDT: Objection to form. 16 A I think that is a simplification, 17 because the operations area is responsible for 18 insuring that the segregated accounts are 19 maintained and that customer assets are put into 20 the right place. So, there is a huge emphasis 21 within the operations area to insure, again, that 22 the data that is being sent to the 3-3 calculation 23 is correct. 24 There is a -- traditionally it's 25 called a financial control group who is making TSG Reporting - Worldwide 877-702-9580</p>	<p>1 P. Vinella 2 sure the cash has been segregated correctly and 3 that the cash reconciles with the cash balances at 4 the bank, and that the bank's accounts are still 5 in good standing and in a good control location. 6 So, there is lots of people within an 7 operation that is responsible for insuring that 8 the 3-3 calculation is correct. There is a 9 regulatory reporting group who is responsible for 10 filing that report, but I think that you can't 11 separate the responsibilities of all those 12 different organizations. 13 Q In the event, sir, that within a 14 broker dealer there is a requirement to interpret 15 the Customer Protection Rules under c3, is that 16 an -- is that interpretation function typically 17 the responsibility of the operations staff or is 18 it typically the responsibility of the regulatory 19 reporting and compliance people? 20 MS. NEUHARDT: Objection to form. 21 A I don't know that there is a set 22 rule. For instance, FINRA, and before that NASDR, 23 and the New York Stock Exchange, had 24 interpretations that were available online or in 25 hard copy of the 3-3 calculation, so there is the TSG Reporting - Worldwide 877-702-9580</p>
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<p>1 P. Vinella 2 statute and then there is the actual 3 interpretations of how to implement it. 4 And in many cases that implementation 5 is really responsible -- is the responsibility of 6 an operations area. If someone says you have 7 segregated accounts, there may be a discussion 8 with an attorney within the firm saying, well, can 9 you use a fluid account or does it have to be a 10 physical account that separates the two. There 11 might be discussion along that line. But it 12 wouldn't necessarily be a compliance officer. In 13 many cases you actually go to an attorney in the 14 firm for those types of interpretations. 15 Q Are you an attorney, sir? 16 A Oh, no. 17 MS. NEUHARDT: Smarter than that. 18 Q Moving on to Smith Barney, we are on 19 page 41 of your report, sir. You say you gained 20 significant related experience during your tenure 21 at Smith Barney, a U.S. broker dealer that is now 22 part of Citigroup. 23 Can you tell me, sir, what experience 24 you had at Citigroup that is related to the issue 25 of 15c3, and in particular to the Customer TSG Reporting - Worldwide 877-702-9580</p>	<p>1 P. Vinella 2 Protection Rules? 3 A As I mentioned earlier, I oversaw the 4 integration of the Shearson businesses, 5 fixed-income businesses into Smith Barney, and 6 that was the entire aspect of the fixed-income 7 businesses. 8 One of the reasons that Sandy Weill 9 wanted to purchase Shearson was that, one, it had 10 a system that they had spent, according to him, 11 several billions of dollars developing, that Smith 12 Barney didn't have, and in order to grow the 13 business the way he wanted, that was an important 14 aspect. 15 And one of the unique features of 16 that was that the institutional desk could set 17 prices for retail brokers on fixed-income 18 securities, which for people who don't know, that 19 used to be very time consuming. You had to call 20 people on the phone. You had a lot of 21 intermediaries involved in the firm that were 22 making two to three hundred thousand dollars a 23 year. 24 Mr. Weill believed that by bringing 25 this new system in, he could make it faster, have TSG Reporting - Worldwide 877-702-9580</p>

<p style="text-align: right;">Page 82</p> <p>1 P. Vinella 2 more control, and dramatically reduce the cost of 3 supporting that retail fixed-income business. 4 That was one component. 5 A second component was the fact that 6 Shearson was one of the only retail brokers at 7 that point, and maybe the only one, to sell 8 mortgage-backed securities into the retail 9 network. 10 And then the third aspect was 11 Shearson had just started ramping up a business at 12 the time that was called a wrap business, which is 13 a managed account for individuals, like a small 14 money management function. They are pretty 15 popular at this point in time, but at that point I 16 think Shearson was the inventor of that. 17 So, part of my job of overseeing all 18 the fixed-income area was, one, to make sure that 19 the system we were acquiring was actually going to 20 be implemented within the Smith Barney 21 environment. 22 Two, that we would bring over all the 23 retail accounts, and there was tens of millions of 24 retail accounts at that point. I can't remember 25 the exact number. There was 25 million accounts TSG Reporting - Worldwide 877-702-9580</p>	<p style="text-align: right;">Page 83</p> <p>1 P. Vinella 2 that would be coming over. 3 And then, three, that we were able to 4 service these new types of businesses, the wrap 5 businesses as well as the mortgage-backed 6 business. 7 As part of my overall responsibility, 8 I had to make sure, one, as we were doing the 9 integration, both the Shearson businesses and the 10 Smith Barney businesses were compliant. 11 Two, once we decided to cut over the 12 legal entity of Shearson into Smith Barney, that 13 there were no problems going forward on that. 14 And number three, once those 15 businesses were going together, that the new 16 operating environment could support the joint 17 businesses, and a major part of that was 18 regulatory reporting 19 Q I'm glad you got to that at the end 20 of the answer. I would hate to start again. 21 Focusing you on the last couple of 22 lines of your answer, sir, what did you do to make 23 sure that both businesses, the Shearson and the 24 Smith Barney businesses, were compliant with the 25 Customer Protection Rule under c3? TSG Reporting - Worldwide 877-702-9580</p>
<p style="text-align: right;">Page 84</p> <p>1 P. Vinella 2 A At that point I was relying on the 3 compliance officer at Smith Barney. It was her 4 responsibility to look at the regulatory reporting 5 on the Shearson side and the Smith Barney side, 6 and she reported in to my area. 7 Q Same question for when the businesses 8 merged, sir. What did you do, if anything, to 9 make sure that the merged businesses that you have 10 just described were compliant with the Customer 11 Protection Rule under c3? 12 A We had a very extensive testing 13 program of not just the systems but of the 14 operations, including trading. We actually had 15 several work sessions over the weekend or several 16 weekends where we would bring up Lehman Brothers 17 staff and Shearson staff to midtown with Smith 18 Barney and do mock trading and mock operations, do 19 mock, what's called end of days, where you close 20 out the books and records, to show that when we 21 were operating as one unit everything was working 22 correctly. 23 So, that it took about, as I 24 remember, close to ten months from the time that 25 they announced the acquisition of Shearson to TSG Reporting - Worldwide 877-702-9580</p>	<p style="text-align: right;">Page 85</p> <p>1 P. Vinella 2 where we actually cut that business over to Smith 3 Barney. 4 So, during that period of time, 5 again, there was a lot of testing. Once it went 6 live, we had what we call day one support. So for 7 the next month or so, until we put out the first 8 customer statements, we were operating with lots 9 of technology people and extra operations staff to 10 make sure that it was working correctly. 11 And after that period of time, people 12 believed that it was relatively stable, and I went 13 off and my responsibilities changed. 14 Q As part of the testing you have just 15 described, sir, was it part of your responsibility 16 to make sure that the systems were compliant with 17 the Customer Protection Rule under c3? 18 A We looked at net capital as well as 19 the 3-3 calculation, yes. 20 Q To whom did you report in that 21 endeavor, sir? 22 A I reported to Jamie Diamond, who was 23 the CEO of Smith Barney, and I reported to Bob 24 Druskin who, was the head of operations. 25 So, on the business, business issues, TSG Reporting - Worldwide 877-702-9580</p>

1 P. Vinella
2 I reported to Jamie, and for the operational
3 issues I reported to Bob.

4 **Q Did you report in to anybody who has**
5 **responsibility for regulatory compliance and**
6 **reporting?**

7 A All of regulatory reports, as I
8 understood it, reported in to Bob Druskin.

9 **Q Did you actually perform any live c3**
10 **calculations when you were at Smith Barney?**

11 A During that month period after we cut
12 over the legal entity from Shearson to Smith
13 Barney, they were producing 3-3 calculations, yes,
14 and I was -- again, had overall responsibility.

15 And the easiest way to look at it, I
16 was in the sense the CEO of the fixed-income
17 business, so I was responsible for accounting, I
18 was responsible for operations, I was responsible
19 for trading and sales, I was responsible for risk
20 management, as my overall purview.

21 MR. OXFORD: Can you read my last
22 question back, please, Bonnie.

23 (Record read.)

24 **Q I don't think you answered that**
25 **question, sir. Could you try again, please.**

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1 **P. Vinella**
2 MS. NEUHARDT: I believe he did
3 answer the question.

4 MR. OXFORD: We can agree to
5 disagree.

6 MS. NEUHARDT: He said that he was
7 responsible for the live calculations.

8 You can answer it again.

9 A I wasn't the compliance officer, but
10 I was responsible for insuring that those
11 calculations were done, and if there was some
12 variance of -- in the reports, I would have been
13 the one that they would have come to and said that
14 they had a problem.

15 **Q Lastly, just moving to Drexel, sir.**

16 A Yes.

17 **Q You said, as a result of your**
18 **experience as a senior executive of an affiliate**
19 **of Drexel Burnham Lambert, you were well aware of**
20 **the many operational challenges faced by LBI.**

21 **Do you see that?**

22 A I do.

23 **Q Which operational challenges are you**
24 **referring to here?**

25 A One of the areas that I was
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1 P. Vinella
2 responsible for supporting was the government
3 trading desk at Drexel. When the parent company
4 filed Chapter 11, I believe, the broker dealer
5 went into liquidation. The subsidiary that
6 actually performed the government trading, which
7 was called Drexel Burnham GSI, actually was not
8 allowed to go into liquidation or receivership.
9 It was actually operating for several months after
10 both the parent and the broker dealer had gone
11 into liquidation. And we were supporting that
12 trading desk.

13 So, it was -- some of the things --
14 there is not a lot of people that have been
15 involved when broker dealers go down, and I think
16 this was somewhat unique with Lehman Brothers,
17 that the holding company went into receivership
18 and the broker dealer tried to stay. Very similar
19 operationnal issues in Drexel, where you are
20 relying on other entities to perform certain
21 services for you that just don't exist, whether
22 those are financial services or technology
23 services or operational services.

24 **Q Did you have any responsibility, sir,**
25 **while you were at Drexel in any way in connection**

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1 **P. Vinella**
2 **with customer reserve requirements and rules under**
3 **15c3?**

4 A Not at that time, no.

5 **Q If you would turn to page 34 of your**
6 **report, sir. Actually, page 33, please. And in**
7 **particular, to the section on expert testimony.**

8 A Okay.

9 **Q And does the testimony that you have**
10 **listed here, whether it's the commercial Mexicana**
11 **matters, the Cantor Fitzgerald matter, or the**
12 **O'Connor matter, does any of that relate in any**
13 **way to Rule 15c3?**

14 A No.

15 **Q It appears from your report, sir,**
16 **that in the Cantor Fitzgerald and O'Connor**
17 **Associates matters, you testified as a live**
18 **witness in court; is that right?**

19 A I did, yes.

20 **Q To your knowledge, sir, have you ever**
21 **been excluded from expressing an opinion at trial?**

22 A Not to my knowledge, no.

23 **Q Just turning the page, to the section**
24 **on Congressional testimony, sir. Looking at the**
25 **four items listed there, do any of those four**

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<p>1 P. Vinella</p> <p>2 items relate in any way to Rule 15c3 reserve</p> <p>3 calculations?</p> <p>4 A The work that I did with the GAO</p> <p>5 around the terrorist attacks of 2001 dealt with a</p> <p>6 lot of operational issues, especially around</p> <p>7 clearing banks and the ability for customers to</p> <p>8 get their assets out. So, from that point of</p> <p>9 view, I would say yes, it was highly germane.</p> <p>10 We -- part of my mandate was to look</p> <p>11 at ways that the financial system could be taken</p> <p>12 down, and one of the key components was to</p> <p>13 evaluate whether customers would be able to get</p> <p>14 either cash or their collateral assets out of a</p> <p>15 broker dealer or a bank as promptly as they would</p> <p>16 like to get them. If they couldn't, what would</p> <p>17 happen to the financial system going forward.</p> <p>18 So, there was substantial work in</p> <p>19 that area, yes.</p> <p>20 Q Did you provide the GAO with a</p> <p>21 report, sir?</p> <p>22 A We did not actually produce a report.</p> <p>23 We produced -- we would analyze specific questions</p> <p>24 they asked us to come up with scenarios. I</p> <p>25 wouldn't say it was a report in a traditional</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 P. Vinella</p> <p>2 sense, but there was lots of paper involved.</p> <p>3 Q Whom at the GAO did you deal with</p> <p>4 primarily?</p> <p>5 A I can't even remember their names</p> <p>6 right now. I can get that for you if you think</p> <p>7 it's important.</p> <p>8 I'm actually in the report that they</p> <p>9 filed. I was listed as one of the resources that</p> <p>10 they relied on.</p> <p>11 Q Do you remember the name of the</p> <p>12 report that they filed, sir?</p> <p>13 A I think it actually is something like</p> <p>14 the vulnerability of the U.S. financial system to</p> <p>15 terrorist attacks, but that is pure memory.</p> <p>16 Q Okay. Turning to your publications,</p> <p>17 sir, at the bottom of page 34 of your report, it</p> <p>18 has a section Representative Publications.</p> <p>19 A Yes.</p> <p>20 Q Are there any publications that you</p> <p>21 were responsible for that relate to the topic of</p> <p>22 15c3 that are not listed here?</p> <p>23 A That are not listed?</p> <p>24 Q Yes.</p> <p>25 A No. This is, to my knowledge, the</p> <p>TSG Reporting - Worldwide 877-702-9580</p>
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<p>1 P. Vinella</p> <p>2 total list in the last ten years of publications.</p> <p>3 Q So it's not in fact representative,</p> <p>4 it's a complete list of your publications, to the</p> <p>5 best of your knowledge?</p> <p>6 A Of the last ten years. There is</p> <p>7 substantially more publications prior to this. I</p> <p>8 didn't include those.</p> <p>9 Q Do any of those publications that are</p> <p>10 older than ten years relate in any way to 15c3?</p> <p>11 A I don't believe so.</p> <p>12 Q Turning to page 36, sir, you list</p> <p>13 some representative presentations.</p> <p>14 A Yes.</p> <p>15 Q How did you go about compiling that</p> <p>16 list of representative presentations?</p> <p>17 A I keep a calendar as well as the</p> <p>18 presentations that I made. So, and again, this is</p> <p>19 from the period of PVA/Toucan through Wilmington</p> <p>20 Trust Conduit Services.</p> <p>21 So, to answer your question, I just</p> <p>22 maintain a calendar, and I keep the presentations</p> <p>23 online.</p> <p>24 Q Keep them online?</p> <p>25 A On my computer system.</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 P. Vinella</p> <p>2 Q And these are all presentations that</p> <p>3 you have given from 2005 onwards?</p> <p>4 A I believe it's all the presentations</p> <p>5 since earlier than 2005, but includes everything</p> <p>6 that I know of from 2005.</p> <p>7 Q From what date did you start looking</p> <p>8 when you were trying to compile this list of</p> <p>9 publications, sir -- sorry, presentations?</p> <p>10 A Again, from the beginning of</p> <p>11 PVA/Toucan through my period of time at Wilmington</p> <p>12 Trust Conduit Services.</p> <p>13 Q That is approximately 1995 onwards?</p> <p>14 A Yeah.</p> <p>15 Q Do any of these presentations deal</p> <p>16 with the topic of SEC Rule 15c3?</p> <p>17 MS. NEUHARDT: Objection to form.</p> <p>18 A In the context of how can executive</p> <p>19 management be assured that their operations, and I</p> <p>20 am using that meaning revenue generation and not</p> <p>21 just back office operations, are in compliance</p> <p>22 with regulations, one of the things that Jeanette</p> <p>23 Jin and I developed was a way for executive</p> <p>24 management to independently verify the</p> <p>25 calculations, such as the 3-3, were being, one,</p> <p>TSG Reporting - Worldwide 877-702-9580</p>

1 P. Vinella
2 performed; two, being performed in a timely
3 manner, and three, that the management could have
4 faith that they were being performed accurately.

5 So, in the context of being able to
6 monitor the quality of the operations, as well as
7 the actual output of the operations, we did a lot
8 of work in that area.

9 **Q And you testified, sir, that you have**
10 **copies of all these presentations sitting on your**
11 **computer.**

12 A I believe I do have copies of all of
13 these, yes.

14 **Q Have you provided them to counsel?**

15 A No.

16 MR. OXFORD: We can deal with it
17 afterwards.

18 MS. NEUHARDT: I would need to look
19 at the stip.

20 MR. OXFORD: I would like to request
21 a copy of those.

22 MS. NEUHARDT: We will do it during a
23 break.

24 MR. OXFORD: Thanks.

25 **Q Sir, when were you first engaged by**
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1 **P. Vinella**
2 **Barclays in this matter?**

3 A I believe it was around Thanksgiving
4 of 2009.

5 **Q And you submitted your report on**
6 **January 8th, 2010; correct?**

7 A Yes.

8 **Q When did you first start working on**
9 **that report?**

10 A I believe it was sometime in the
11 second week of December. Let me clarify. When I
12 physically started to write the report. We
13 actually started doing analysis that we then used
14 in the report very shortly after we had been
15 retained.

16 **Q Okay. Who is the "we," sir?**

17 A I used a team from LECG. One was
18 Jeanette Jin. The second one was Armand
19 D'Accordo, who was the Bankers Trust business
20 manager that I've mentioned.

21 Also, two other gentlemen from
22 Wilmington Trust Conduit Services, one named
23 Andrea Calderoni, and a second named Sergio
24 Godinho.

25 And we also had someone, a very
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1 P. Vinella
2 junior person, to do proofreading and things like
3 that of the drafts, named David Li.

4 **Q As much for my benefit as Bonnie's,**
5 **can you give me the names and the spellings of**
6 **each of those five individuals.**

7 **Jeanette Jin?**

8 A Sure. Jeanette is J-E-A-N-E-T-T-E.
9 The last name is J-I-N, or -- J-I-N, yes. Sorry.

10 Armand is A-R-M-A-N-D. D'Accordo is
11 D apostrophe A-C-C-O-R-D-O.

12 Andrea is A-N-D-R-E-A, and the last
13 name is Calderoni. C-A-L-O-N --
14 C-A-L-D-E-R-O-N-I.

15 And Sergio is S-E-R-G-I-O. And
16 Godinho is -- I should get people who have very
17 Anglo names. Much easier to spell. But Godinho
18 is G-O-D-H-N -- I need a pen. G-O-D-I-N-H-O.

19 And Li is just -- David Li is L-I.

20 **Q Are these five individuals, sir,**
21 **employed by LECG?**

22 A They are contracted to LECG.

23 I should point out that that is the
24 common model for LECG. We don't have lots of
25 employees. We have mostly contractors.

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1 P. Vinella

2 **Q You said that the team of you and the**
3 **five people you have just listed for me started on**
4 **analysis shortly after you were engaged, sir.**

5 **Can you tell me what analysis that**
6 **you embarked upon shortly after you were engaged?**

7 MS. NEUHARDT: To the extent the
8 analysis is relevant to your report -- and
9 actually, you know what? Can we just take a
10 break. I want to check the stip real quick.

11 (Pause)

12 MS. NEUHARDT: You can answer the
13 question to the extent it relates to things
14 that actually ended up in your report and do
15 not include any discussion of the people at
16 LECG, your discussions among the people.
17 You can say in broad terms what you did to
18 gather information for the opinions that
19 ended up in your report

20 MR. OXFORD: I'm sorry. Can I
21 understand correctly --

22 MS. NEUHARDT: Sure.

23 MR. OXFORD: -- what it is you are
24 instructing the witness to answer and not
25 answer?

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<p>1 P. Vinella</p> <p>2 MS. NEUHARDT: Well, you asked him a</p> <p>3 very broad question at first, which</p> <p>4 obviously I assumed then you would break it</p> <p>5 down after he started to answer.</p> <p>6 But I specifically want to make sure</p> <p>7 that he does not get into -- and I am</p> <p>8 looking at the stip, if you have the stip</p> <p>9 available. Maybe we can go off the record</p> <p>10 if you don't and we can talk about it.</p> <p>11 He does not have to disclose</p> <p>12 communications between people working under</p> <p>13 his direction, so that is all these</p> <p>14 contractors he just named for you.</p> <p>15 He does not have to disclose</p> <p>16 communications with the party disclosing the</p> <p>17 expert, so that would include people at</p> <p>18 Barclays except to the extent that he relied</p> <p>19 on those communications for original facts,</p> <p>20 which I believe we produced the notes that</p> <p>21 show that.</p> <p>22 And drafts I don't think is really</p> <p>23 relevant to that particular question you</p> <p>24 asked.</p> <p>25 So, that is what I am relying on with</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 P. Vinella</p> <p>2 my instruction to him</p> <p>3 MR. OXFORD: Your instruction, just</p> <p>4 so we have a clear record, is what, Amy?</p> <p>5 MS. NEUHARDT: The instruction is --</p> <p>6 well, first, let's go -- the question is,</p> <p>7 how did you -- let's go back to the</p> <p>8 question, which I think was, what did you do</p> <p>9 to analyze -- let's get the question read.</p> <p>10 (Recess taken.)</p> <p>11 MR. OXFORD: Back on the record.</p> <p>12 Could you repeat my question, please,</p> <p>13 Bonnie.</p> <p>14 (Record read.)</p> <p>15 MS. NEUHARDT: And I would instruct</p> <p>16 the witness that when you respond to that</p> <p>17 question, you should not reveal any</p> <p>18 information gleaned in that analysis that</p> <p>19 ended up not being a source you relied upon</p> <p>20 in your report.</p> <p>21 THE WITNESS: Okay.</p> <p>22 A The first document that I received</p> <p>23 was Mr. McIsaac's affidavit, and we were asked to</p> <p>24 read through that and come up with some basic</p> <p>25 questions around the scope of Mr. McIsaac's</p> <p>TSG Reporting - Worldwide 877-702-9580</p>
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<p>1 P. Vinella</p> <p>2 affidavit, some of the conclusions he made and the</p> <p>3 supporting documentation he provided to make those</p> <p>4 conclusions.</p> <p>5 The other thing we looked into was</p> <p>6 the ability or the possibility of independently</p> <p>7 computing the 3-3 reserve calculation.</p> <p>8 Q Taking those in reverse order, sir,</p> <p>9 is it correct to say that you elected not to</p> <p>10 independently compute the 3-3 reserve computation?</p> <p>11 A That's true.</p> <p>12 Q Tell me why that is.</p> <p>13 MS. NEUHARDT: Without revealing</p> <p>14 communications with counsel.</p> <p>15 A We had a very short time frame in</p> <p>16 which to produce the report, and we were working</p> <p>17 over the holiday season, so it didn't seem to be</p> <p>18 practical to try to attempt a calculation like</p> <p>19 that.</p> <p>20 Also, we set up a phone call with a</p> <p>21 number -- and this through the attorneys -- with a</p> <p>22 number of the ex-Lehman staff that was still at</p> <p>23 Barclays to find out how many people were still</p> <p>24 available that understood the operations.</p> <p>25 Again, the 3-3 calculation was the</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 P. Vinella</p> <p>2 result of lots of operational systems and</p> <p>3 operations staff working with those systems, and</p> <p>4 we needed to know how many were still available</p> <p>5 that could help us understand that, where the data</p> <p>6 was.</p> <p>7 We were told that there had been a</p> <p>8 staff of close to 100 Deloitte consultants trying</p> <p>9 to recreate the books and records of Lehman, and</p> <p>10 given the fact that not all the people were</p> <p>11 available, that they already had a very large</p> <p>12 staff working for close to a year at that point,</p> <p>13 not longer than a year, trying to recreate the</p> <p>14 books and records, it didn't seem to be practical</p> <p>15 to try to independently compute the 3-3</p> <p>16 calculation in this time frame.</p> <p>17 And there was also a question of</p> <p>18 whether we would even have access to the data that</p> <p>19 Deloitte had. If we had access to that, that</p> <p>20 might have made a difference in the decision.</p> <p>21 Q What was the answer to the question</p> <p>22 how many people of the ex-Lehman operations staff</p> <p>23 were available who understood the operations that</p> <p>24 you would need to recalculate the c3 calculation</p> <p>25 as of 9/19?</p> <p>TSG Reporting - Worldwide 877-702-9580</p>

1 P. Vinella
2 A Could you repeat the question. I'm
3 sorry.
4 Q You said you were on a telephone call
5 with a number of ex-Lehman staff who were still at
6 Barclays, and you said that there was a question
7 about how many were available who actually
8 understood the relevant operations; is that
9 correct?
10 A Yes.
11 Q What was the answer to that question
12 that you just posed?
13 A There were a couple of problems.
14 One, some of the -- of the staff actually didn't
15 go from Lehman Brothers to Barclays. They went to
16 other banks or were unemployed.
17 There was also an agreement which I
18 was -- it was referred to as the TSA agreement,
19 and a number of the staff that would have had
20 firsthand knowledge of either the operations or
21 the 3-3 calculation itself, were, quote/unquote,
22 ring-fenced by the TSA agreement. And we wouldn't
23 necessarily have access to them as well.
24 And there was also a question of
25 whether we would have access to all the data in
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1 P. Vinella
2 We would have to have access to stock
3 loan information that was using customer assets.
4 We would have to have information
5 about fixed-income sales to customers that were
6 out of principal positions.
7 Basically all the operational
8 components that go into the eight credits and the
9 six debits of the calculation. And again, it
10 can't be a subset of customer activity. It would
11 have to be all customers.
12 Q Can you identify for me who the
13 ex-Lehman staff who were on this call were?
14 A I can't tell you all the names
15 because there were quite a few, and this is our
16 first meeting, and the purpose of the call, again,
17 was to understand who we needed to talk to.
18 The gentlemen that I remember was
19 Bill Burke, Alastair Blackwell, Alex Crepeau or
20 Crepeau.
21 MS. NEUHARDT: Crepeau.
22 Q Is that C-R-E-P-E-A-U?
23 MS. NEUHARDT: Yes.
24 A Those are the gentlemen that I
25 remember most clearly talking on the phone.
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1 P. Vinella
2 the Lehman systems, you know, that would have data
3 through the week of the 15th, if we would have
4 access actually to that data.
5 So those were the major issues.
6 Q Which data did you believe, sir, you
7 did not have access to, that you would have needed
8 to recalculate the c3 calculation from 9/19/08?
9 A I believe during that conversation we
10 were told that data that was required to support
11 the customers that went from Lehman to Barclays
12 was available; however, that they weren't sure if
13 the entire set of all the Lehman customer data was
14 available at that point.
15 Q Can you be more specific about the
16 data that might not have been available to you if
17 you decided to recalculate the c3 computation with
18 effect from 9/19/08?
19 A We would have had to have access to
20 all the customer accounts, both cash and
21 collateral.
22 We would have had to have access to
23 reconciliation records showing that the balances
24 that were portrayed in those accounts, in either
25 MTS, ITS or the ADP system, were actually correct.
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1 P. Vinella
2 Q Did those gentlemen tell you that
3 Barclay's position was that it purchased the LBI
4 broker dealer books and records?
5 A That question didn't come up.
6 Q Okay. The records that you testified
7 about to which you believe there was a question as
8 to whether or not Barclays had access, do you have
9 any basis to believe that the SIPA trustee has
10 access to all of that data?
11 A I would -- I believe that one of the
12 conversations that -- in fact, with Bill Burke, I
13 believe he said that, and he mentioned that that's
14 what the TSA team was working on, and the Deloitte
15 team was trying to reconcile the books and records
16 as of the 19th.
17 So I -- if it wasn't explicitly
18 stated that they had it, it was implied, based on
19 the work that they were doing.
20 Q I want to be very clear on this. Did
21 Mr. Burke tell you that the SIPA trustee and the
22 professionals at his disposal had access to all of
23 the data necessary to rerun the c3 calculation
24 with effect from September 19th, 2008?
25 A I believe the way he put it was they
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1 P. Vinella
2 had the ability to reconstruct the books and
3 records, not that they necessarily had the data.

4 **Q What is the difference between those**
5 **two concepts, sir?**

6 A One is, the ability to reconstruct
7 the books and records means that you have enough
8 information about the breaks that you can go in
9 and resolve them in some acceptable way.

10 To me, the data would mean that it's
11 already been resolved, it's sitting on a system,
12 and you just have to push a button for the
13 calculation.

14 **Q Do you agree that the recreation of**
15 **the c3 reserve calculation as of 9/19/2008 is a**
16 **substantial undertaking?**

17 A Given my understanding of the number
18 of breaks and the fact that Lehman Brothers on the
19 19th really had no independent way of
20 understanding what cash or collateral came in or
21 out of its clearing accounts, especially the ones
22 at Chase, yes, it would be a large undertaking.

23 **Q Do you agree that an important part**
24 **of any such undertaking would be the need to use**
25 **the ex-Lehman staff who were responsible for the**

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1 **P. Vinella**
2 **operations that fed into the c3 reserve**
3 **calculation prior to LBI's liquidation?**

4 MS. NEUHARDT: Objection, form.

5 A It's not necessary. It's helpful,
6 but it's not necessary. Our -- again, it's just
7 not necessary.

8 **Q Can you describe for me Ms. Jin's**
9 **experience with respect to SEC Rule 15c3 and in**
10 **particular the Customer Protection Rules?**

11 A She worked on most of the projects
12 that I have listed in my report. And she was a
13 senior business analyst on -- that was basically
14 her title on those types of engagements.

15 Also, she ran all of operations at
16 Wilmington Trust Conduit Services, so she was
17 responsible for setting up the segregated accounts
18 for customers, responsible for monitoring all the
19 activity in those accounts.

20 We actually had the gentleman who ran
21 global broker dealer operations for ABN Amro
22 reported in to her as part of that work.

23 She was responsible for all financial
24 reporting and regulatory reporting associated with
25 the deals that we supported, so she was very

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1 P. Vinella
2 familiar with the operational aspects of the 3-3
3 calculations as well.

4 **Q When you say she was responsible for**
5 **the regulatory reporting associated with the deals**
6 **that you supported --**

7 A Yes.

8 **Q -- can you be a little more specific**
9 **about what you mean by that?**

10 MS. NEUHARDT: Jeanette is not the
11 expert here. I will let him go a little
12 bit. But I am having a hard time seeing the
13 relevance here, because she is not the one
14 who has provided an opinion here.

15 You can answer the question.

16 A In the -- the securitizations that we
17 supported, the majority issued securities that
18 were registered in the United States and/or
19 registered offshore, and as registered securities
20 they would have to -- there was regulatory
21 reporting associated with that, whether that was
22 registered at the DTC or it was registered at the
23 Dublin Stock Exchange.

24 So part of our duties were to file
25 those types of reports showing that indeed the

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1 P. Vinella
2 condition of those securities were correct, that
3 the collateral that backed those securities was
4 actually kept in a segregated account and the
5 like.

6 So, she was responsible for that type
7 of report.

8 **Q Do you know whether Ms. Jin filed**
9 **reports under the Customer Protection Rules of c3?**

10 A Not the c3.

11 **Q The same questions for Mr. Armand**
12 **D'Accordo.**

13 MS. NEUHARDT: This is really
14 irrelevant. What is your basis for
15 inquiring into this? I don't see how it has
16 anything to do with Mr. Vinella's
17 qualifications.

18 MR. OXFORD: I think it's germane.
19 These are people who worked under him at his
20 direction on this report.

21 MS. NEUHARDT: It's his experience
22 that is at issue here, not theirs.

23 You can answer the question if you
24 want.

25 It's a continuing objection to the

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<p>1 P. Vinella</p> <p>2 relevance of inquiring into the</p> <p>3 qualifications of people who are not being</p> <p>4 presented as experts.</p> <p>5 MR. OXFORD: That's fine. I will</p> <p>6 give you a running objection, if that is</p> <p>7 helpful.</p> <p>8 A Mr. D'Accordo was the business</p> <p>9 manager for the trading businesses at Bankers</p> <p>10 Trust. He's a CPA, and he -- part of his duty was</p> <p>11 to review call reports and focus reports. Both</p> <p>12 bank operations and broker dealer operations</p> <p>13 reported in to him, so as part of his mandate he</p> <p>14 reviewed the results of the 3-3 calculations that</p> <p>15 were included in the focus report.</p> <p>16 Q For what purpose was Mr. D'Accordo</p> <p>17 reviewing the c3 calculations, if you know?</p> <p>18 A As business manager, he's responsible</p> <p>19 for all the financial reporting and regulatory</p> <p>20 reporting for the trading businesses at Bankers</p> <p>21 Trust. So he reported in to -- a business manager</p> <p>22 oversaw all of that trading activity, and he was</p> <p>23 just insuring that the business was running</p> <p>24 correctly, and that there were no large</p> <p>25 discrepancies, either in terms of risk they were</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 P. Vinella</p> <p>2 taking, changes in P & L, compliance breaks and</p> <p>3 the like.</p> <p>4 So, she was responsible for that type</p> <p>5 of report.</p> <p>6 Q Do you know whether Ms. Jin filed</p> <p>7 reports under the Customer Protection Rules of c3?</p> <p>8 A Not the c3.</p> <p>9 Q The same questions for Mr. Armand</p> <p>10 D'Accordo.</p> <p>11 MS. NEUHARDT: This is really</p> <p>12 irrelevant. What is your basis for</p> <p>13 inquiring into this? I don't see how it has</p> <p>14 anything to do with Mr. Vinella's</p> <p>15 qualifications.</p> <p>16 MR. OXFORD: I think it's germane.</p> <p>17 These are people who worked under him at his</p> <p>18 direction on this report.</p> <p>19 MS. NEUHARDT: It's his experience</p> <p>20 that is at issue here, not theirs.</p> <p>21 You can answer the question if you</p> <p>22 want.</p> <p>23 It's a continuing objection to the</p> <p>24 relevance of inquiring into the</p> <p>25 qualifications of people who are not being</p> <p>TSG Reporting - Worldwide 877-702-9580</p>
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<p>1 P. Vinella</p> <p>2 presented as experts.</p> <p>3 MR. OXFORD: That's fine. I will</p> <p>4 give you a running objection, if that is</p> <p>5 helpful.</p> <p>6 A Mr. D'Accordo was the business</p> <p>7 manager for the trading businesses at Bankers</p> <p>8 Trust. He's a CPA, and he -- part of his duty was</p> <p>9 to review call reports and focus reports. Both</p> <p>10 bank operations and broker dealer operations</p> <p>11 reported in to him, so as part of his mandate he</p> <p>12 reviewed the results of the 3-3 calculations that</p> <p>13 were included in the focus report.</p> <p>14 Q For what purpose was Mr. D'Accordo</p> <p>15 reviewing the c3 calculations, if you know?</p> <p>16 A As business manager, he's responsible</p> <p>17 for all the financial reporting and regulatory</p> <p>18 reporting for the trading businesses at Bankers</p> <p>19 Trust. So he reported in to -- a business manager</p> <p>20 oversaw all of that trading activity, and he was</p> <p>21 just insuring that the business was running</p> <p>22 correctly, and that there were no large</p> <p>23 discrepancies, either in terms of risk they were</p> <p>24 taking, changes in P & L, compliance breaks and</p> <p>25 the like.</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 P. Vinella</p> <p>2 Q Same questions for Andrea Calderoni.</p> <p>3 A Andrea was at Wilmington Trust</p> <p>4 Conduit Services. His title was risk analyst, and</p> <p>5 part of his job was to review all the results of</p> <p>6 the operations, make sure that they were done</p> <p>7 correctly, and then produce all the risk</p> <p>8 management compliance reports associated with the</p> <p>9 transactions Wilmington Trust Conduit Service was</p> <p>10 managing. I believe he was overseeing two of the</p> <p>11 CDOs that we were managing.</p> <p>12 Q I think you testified earlier that</p> <p>13 Wilmington Trust wasn't a broker dealer.</p> <p>14 A Wilmington Trust Conduit Services was</p> <p>15 not a broker dealer.</p> <p>16 Q Did he work for the broker dealer arm</p> <p>17 of Wilmington Trust?</p> <p>18 A Well, he -- excuse me for</p> <p>19 interrupting. He worked for the Wilmington Trust</p> <p>20 Conduit Services.</p> <p>21 (Discussion held off the record.)</p> <p>22 Q Same questions for Mr. Godinho.</p> <p>23 A Sergio was the manager of the risk</p> <p>24 analyst group, and as such, he was responsible for</p> <p>25 overseeing Andrea and his peers, and he also</p> <p>TSG Reporting - Worldwide 877-702-9580</p>

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<p>1 P. Vinella</p> <p>2 oversaw the more complicated securitizations that</p> <p>3 we were administering.</p> <p>4 Q The rate at which you are billing out</p> <p>5 your services, sir, to Barclays is \$650 per hour;</p> <p>6 is that correct?</p> <p>7 A Yes, it is.</p> <p>8 Q Is that the same rate for all the</p> <p>9 other members of your team?</p> <p>10 A No.</p> <p>11 Q Can you tell me the rates for the</p> <p>12 other members of your team.</p> <p>13 A Jeanette Jin is \$550 an hour.</p> <p>14 Andrea and Sergio are in the three to</p> <p>15 350 range.</p> <p>16 I believe Armand was 375 or something</p> <p>17 in that range.</p> <p>18 Q And Mr. Li?</p> <p>19 A I -- I can't even tell you. He</p> <p>20 was -- Jeanette would know that answer.</p> <p>21 Q Approximately how many hours did you</p> <p>22 personally spend on the work that led up to the</p> <p>23 preparation of your report?</p> <p>24 MS. NEUHARDT: Excluding the drafting</p> <p>25 of the report?</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 P. Vinella</p> <p>2 MR. OXFORD: No. The hours total.</p> <p>3 MS. NEUHARDT: Including the</p> <p>4 drafting?</p> <p>5 MR. OXFORD: Yes.</p> <p>6 A I believe it's somewhere in the</p> <p>7 180-hour range from the beginning of my work</p> <p>8 through the end of January.</p> <p>9 Q Do you know how many hours total your</p> <p>10 team, not just you, but the five people who worked</p> <p>11 at your direction, spent in the work that led up</p> <p>12 to the preparation of and completion of your</p> <p>13 report?</p> <p>14 A I, I didn't track that. Jeanette was</p> <p>15 the one tracking it. So I can't even hazard a</p> <p>16 guess.</p> <p>17 I also don't want to make it sound</p> <p>18 like I was detached from the team. We had daily</p> <p>19 meetings, but I was not the person who was</p> <p>20 tracking the time.</p> <p>21 Q 180 hours doesn't sound detached to</p> <p>22 me, sir.</p> <p>23 A No.</p> <p>24 Q Did you or anyone at your direction,</p> <p>25 sir, conduct any interviews in connection with</p> <p>TSG Reporting - Worldwide 877-702-9580</p>
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<p>1 P. Vinella</p> <p>2 your work that resulted in this report?</p> <p>3 A Yes.</p> <p>4 Q Who did -- who did you interview?</p> <p>5 MS. NEUHARDT: You can, you can name</p> <p>6 who you talked to. When he gets into the</p> <p>7 substance, you can only talk about the</p> <p>8 substance that ended up underlying the</p> <p>9 conclusions of your report. But you can say</p> <p>10 who you talked to.</p> <p>11 A Again, there were gentlemen on the</p> <p>12 phone call that I didn't get their names, and the</p> <p>13 three that I remember were Bill Burke, Alex</p> <p>14 Crepeau and Alastair Blackwell.</p> <p>15 Subsequent to that phone call we had</p> <p>16 a meeting in New York where we interviewed some</p> <p>17 additional people, and there, we met with Ricky</p> <p>18 Policke, David Roden, Alex Crepeau again.</p> <p>19 We also interviewed two gentlemen</p> <p>20 from Barclays, two Johns. One is John Haley. And</p> <p>21 if I could look at the notes to --</p> <p>22 Q John Rodefelf.</p> <p>23 A John Rodefelf, thank you.</p> <p>24 We had -- and we also met with Lenny</p> <p>25 Legotte.</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 P. Vinella</p> <p>2 Then we also interviewed Paolo</p> <p>3 Tonucci on the phone. We interviewed Tony</p> <p>4 Stucchio. Excuse me. And we also interviewed</p> <p>5 Joel Potenciano.</p> <p>6 It sounds like a social club in</p> <p>7 Italy, but --</p> <p>8 Q When did the call with Mr. Burke,</p> <p>9 Mr. Crepeau and Mr. Blackwell happen?</p> <p>10 A I believe that was in the first week</p> <p>11 of December or the last week of November.</p> <p>12 Q Who else was on the call, to the best</p> <p>13 of your recollection?</p> <p>14 A Well, Jeanette Jin on my side.</p> <p>15 Heather King was on the phone. I believe Amy</p> <p>16 Neuhardt was on the phone as well.</p> <p>17 Q Was there any information provided to</p> <p>18 you in that conference call, sir, that you relied</p> <p>19 on in your January 8th report?</p> <p>20 A Not to my recollection. Again, that</p> <p>21 was more of just an introduction to who was still</p> <p>22 available, were the systems available, and who</p> <p>23 would we want to follow up with.</p> <p>24 Q Did you have any interviews with</p> <p>25 anybody between that conference call in the first</p> <p>TSG Reporting - Worldwide 877-702-9580</p>

1 **P. Vinella**
2 **week of December '09 and the meeting in New York?**
3 A I believe we talked to Paolo Tonucci,
4 the global treasurer of Lehman Brothers. I think
5 that actually happened prior to the meeting in
6 New York.
7 **Q Can you give me an estimated date of**
8 **that call, please?**
9 A Not without looking at my calendar,
10 but my belief is it was the second week of
11 December.
12 **Q And that interview with Mr. Tonucci**
13 **was a conference call; is that right?**
14 A It was, yes.
15 **Q As best you recall, who was on that**
16 **telephone call?**
17 A Jeanette Jin, Ms. Neuhardt, Miss
18 King. I don't believe there was anyone else on
19 that call.
20 MS. NEUHARDT: Mr. Tonucci's counsel.
21 It's okay that you don't remember that.
22 **Q You said Ms. King?**
23 A I think she was on the phone call as
24 well.
25 **Q And of course you personally were on**
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1 **P. Vinella**
2 felt about the operations during that week. Did
3 he feel that the operations were sound, was he
4 getting enough information to adequately fund the
5 balance sheet, which is the primary duty of the
6 treasurer. Did he make forecasts of his funding
7 needs, and did -- was the forecasts during the
8 week of the 15th reasonable forecasts.
9 Did he feel that the operations were
10 in -- I use the word chaos, or were they something
11 that was manageable.
12 Also, we asked him if he was involved
13 in the 3-3 calculation in any way. And we asked
14 him to what extent did he use systems
15 independently of MTS, ITS and the ADP BPS.
16 That is the majority of the types of
17 questions we asked him.
18 **Q Taking each of those questions in**
19 **turn, what did Mr. Tonucci tell you?**
20 MS. NEUHARDT: Well, he listed a lot.
21 Maybe you can remind him.
22 **Q I'm happy to do it from my notes.**
23 **You asked him about the general state**
24 **of the broker dealer in the week leading up to**
25 **insolvency.**
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1 **P. Vinella**
2 **that telephone call?**
3 A Oh, yes.
4 **Q And I should have asked the same**
5 **question with respect to the initial call with**
6 **Mr. Burke and others. You were personally on that**
7 **telephone call?**
8 A Yes.
9 **Q Did Mr. Tonucci give you any**
10 **information that you relied upon in your report?**
11 A Yes.
12 **Q Tell me what that information is,**
13 **please.**
14 A We discussed the general state of the
15 broker dealer. He was, again, the group
16 treasurer, so he was responsible for funding and
17 managing the balance sheet of all of the Lehman
18 entities, but we specifically talked about the
19 broker dealer, what is normally --
20 THE WITNESS: Now, should this be --
21 can I ask a question? This should be
22 specifically what I relied on for the report
23 or --
24 MS. NEUHARDT: Yes.
25 A We also asked questions about how he
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1 **P. Vinella**
2 A He mentioned that there was a
3 challenge, because before he was looking at
4 various source of funds from the various legal
5 entities within the Lehman Brothers family, and
6 the broker dealer operating independently was
7 something that no one had really ever thought of.
8 That was kind of, I think, a last-minute decision,
9 was his term, based on the fact that the holding
10 company was going to have to declare bankruptcy.
11 There was also the issue with LBIE
12 going into administration, which caused some
13 issues.
14 But he believed that in general, he
15 was able to meet all the cash requirements that
16 the broker dealer had specifically, and that they
17 were able to find other sources of funds that if
18 they needed to buy money.
19 And he believed that in -- that the
20 numbers that he was getting were accurate numbers.
21 He felt very comfortable that the end-of-day
22 numbers that he was looking at that he would be
23 using for the next day's cash projections were
24 accurate.
25 **Q Can you be more specific about the**
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P. Vinella

numbers he said he was getting. The numbers with respect to what?

A Again, what his responsibility was for was -- a broker dealer cannot be overdrawn in cash accounts, and they cannot be overdrawn in collateral accounts at the depositories. So, his job is to make sure, one, they are not overdrawn, and number two, if there is excess, he has the ability to actually then sell that money out as a profit center.

So, in terms of the first requirement, he believed that if there was deficits, that deficits were being correctly identified, and he was getting it within enough time to actually go out and buy money. It turns out they didn't buy large amounts of money like a commercial bank would, but he was able to go out and buy the money if he needed it.

He was also able to -- he was involved in the 3-3 calculation to the extent that they were withdrawing funds from the reserve account, and so he was -- he would -- felt comfortable in taking the excesses out of that reserve account and using that as part of his

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P. Vinella

funding requirements.

Q Mr. Tonucci told you that he was involved in the c3 calculation, specifically the customer reserve allocation?

A He mentioned that he reviewed the results of the 3-3 calculation, that he would then ask that the excesses be withdrawn as is appropriate and permitted by the regulation, and he was using that cash as part of his, his funding of the balance sheet.

Q Did you ask Mr. Tonucci whether he was aware of the FID accounts being seized by Chase?

A We didn't talk to him specifically about that.

Q Why not?

A As the treasurer, that would not be something that he would normally be involved in.

Q Who would normally be involved in that issue?

A Usually it would be the operations staff would come and say we no longer have access to that collateral, and then there would normally be a reporting through the compliance area, and

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P. Vinella

presumably the CFO's office.

It would be rare that it actually would go to a treasurer.

Q Did you ask Mr. Tonucci if he knew that the Woodlands Bank was improperly coded as a non-customer?

A No, we didn't ask that.

Q Why did you not ask Mr. Tonucci that?

A Again, as the treasurer, he would only see the results of the 3-3 calculation, and the excess, and unless there was reason for him to believe that that number wasn't correct, that he could use that excess -- I'm sure there was an approval process. He mentioned that there was an approval process to withdraw that excess.

So, it didn't seem he would be the person to talk to about specific discrepancies or alleged discrepancies in the calculation.

Q What did Mr. Tonucci tell you about the approval process to withdraw the excess from the c3 reserve?

A As I remember, he said there was a number of people that were involved in the end-of-day review of books and records of Lehman

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P. Vinella

Brothers. Part of it, again, was looking at the 3-3 calculation and determining how much they could take out.

Lehman Brothers' normal course of business, we were told, was to leave a cushion in the account. There was a question of how big that cushion should be. So, when I use the term "approval process," that may be more formal sounding than it was, in terms of it was a collaborative effort of people looking at it.

I don't remember that he mentioned the specific names of the people that were involved.

Q Did you ask Mr. Tonucci about the account coding errors that are mentioned in the Broadridge memo that is Exhibit 28 --

A No.

Q -- to Mr. McIsaac's affidavit?

A No.

Q And is that because you didn't believe that in his position, Mr. Tonucci would have specific knowledge about that error?

A That is a fair characterization.

Q Okay. Did you also ask Mr. Tonucci

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P. Vinella
about the customer securities that LBI held at LBIE --

A No.

Q -- in the week running up to the insolvency of the 19th?

A No.

Q Why not?

A Again, the treasurer's responsibilities are for maintaining positive balances in their cash and collateral accounts, and those responsibilities would be normally performed by someone else.

I should also point out that Mr. Tonucci had a very senior job at Lehman Brothers, and having been in this business for over 20 years, you don't ask lots of details of very senior people. Not that they don't know them, but they tend to get annoyed when you ask them that.

So, trying to keep him in a favorable mood, we thought it was better to talk more about what he was specifically responsible for.

Q You don't know whether or not he talked to anybody at Lehman in the week running up

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P. Vinella
to the insolvency of LBI on the 19th of September about whether or not the customer reserve account was adjusted to take account of any securities that belonged to customers that were held at LBIE?

A We did not ask that question.

Q Did you ask Mr. Tonucci about the 82 million in payments to customers that were seized by Citibank that Mr. McIsaac references in his affidavit?

A No.

Q The reason that you didn't do that is the same answer you gave me when I asked that question with respect to the other four issues; correct?

A Yes.

Q Did you take any notes of your conversation with Mr. Tonucci?

A I did not, personally, no.

Q Do you know whether anybody at your direction took notes?

A There were notes that someone on the team took, yes.

Q By someone on the team, do you mean the LECG team?

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P. Vinella
A The LECG team.
Q Those notes relate to a conversation that you had with Mr. Tonucci that you relied upon in preparing your final report; correct?

A Yes.

Can I clarify that. I didn't review the notes in preparing the report. When we had discussions among the team, the team members would look at their notes. I wouldn't take their notes and rely on those notes for the report.

Q You relied on their recollection or their communication to you of what Mr. Tonucci said on this conference call in December of 2009; correct?

A Yes. Since I was part of the conversation, it was in context. Yes.

MR. OXFORD: Can we go off for one second.

(Discussion held off the record.)

MR. OXFORD: Back on.

I mean, I don't believe we have had those produced to us.

MS. NEUHARDT: Yeah, you have all the notes of Jeanette, Peter, Sergio and Andrea.

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P. Vinella
Right. I don't know if Armand ever made any notes.

THE WITNESS: He wasn't part of any of the interviews.

MS. NEUHARDT: You should have two different, handwriting and then typed.

MR. OXFORD: Perhaps we can deal with this question when we go through the notes. I am just asking general questions.

MS. NEUHARDT: We at least attempted to produce for four of the five people, and the fifth person did not take notes, so.

MR. OXFORD: Okay.

Q Did you have any conversations with anyone else, sir, in connection with your final report, prior to the meeting that took place in New York?

A I believe that the call with Mr. Tonucci was the only call before the meeting in New York.

Q Okay. The meeting in New York took place approximately when, sir?

A I believe it was December 18th, or thereabout.

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<p>1 P. Vinella</p> <p>2 Q Where did it take place?</p> <p>3 A It took place at the old Lehman</p> <p>4 headquarters in Times Square, which is now, I</p> <p>5 guess, Barclays Capital.</p> <p>6 Q And you gave me a list of names, sir.</p> <p>7 Ricky Policke --</p> <p>8 A Yes.</p> <p>9 Q -- was present at that meeting?</p> <p>10 A He was.</p> <p>11 Q David Roden?</p> <p>12 A Yes.</p> <p>13 MS. NEUHARDT: It was an all-day</p> <p>14 meeting, but all these people were present</p> <p>15 at some point, so.</p> <p>16 MR. OXFORD: That's fine. I was</p> <p>17 going to get there.</p> <p>18 Q Alex Crepeau was present?</p> <p>19 A Yes.</p> <p>20 Q John Haley?</p> <p>21 A Yes.</p> <p>22 Q John Rodefled?</p> <p>23 A Yes.</p> <p>24 Q And Lenny Legotte?</p> <p>25 A Yes.</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 P. Vinella</p> <p>2 Q Is that L-E-G-O-T-T-E?</p> <p>3 A I believe it is.</p> <p>4 Q Was Mr. Burke present at any point</p> <p>5 that day?</p> <p>6 A No, he was not.</p> <p>7 Q Mr. Flemming, Dan Flemming?</p> <p>8 A Daniel Flemming was also there.</p> <p>9 Q Mr. Flemming is a former Lehman</p> <p>10 employee; correct?</p> <p>11 A I believe so, yes.</p> <p>12 Q And who attended the meeting from</p> <p>13 LECG?</p> <p>14 A That was myself, Jeanette Jin, Andrea</p> <p>15 and Sergio.</p> <p>16 Q And who else? Was there anybody else</p> <p>17 present for these meetings?</p> <p>18 A Amy Neuhardt and Heather King, and</p> <p>19 Mr. Amman, David Amman, Cleary Gottlieb.</p> <p>20 Q And as Amy suggested, were these</p> <p>21 interviews held seriatim? Did you meet with one</p> <p>22 person at a time or in groups or in one big happy</p> <p>23 session?</p> <p>24 A I know seriatim, by the way. I took</p> <p>25 seven years on Latin.</p> <p>TSG Reporting - Worldwide 877-702-9580</p>
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<p>1 P. Vinella</p> <p>2 Yes, they were actually a series of</p> <p>3 meetings. In some cases there were two people in</p> <p>4 the meeting, in some cases there was a single</p> <p>5 individual that we would be interviewing.</p> <p>6 Q And taking these people one at a</p> <p>7 time, what did Mr. Policke tell you, if anything,</p> <p>8 that you relied upon in creating your final</p> <p>9 report?</p> <p>10 A We asked the questions about his</p> <p>11 responsibility, which appeared to be the MTS</p> <p>12 system and the operations around the MTS system.</p> <p>13 We asked him to categorize or</p> <p>14 characterize, I should say, the operating</p> <p>15 environment that week of the 15th.</p> <p>16 We asked him about -- again, I'll use</p> <p>17 the term "chaos," if he thought it was chaotic or</p> <p>18 if it was something controlled.</p> <p>19 We asked him about the end-of-day</p> <p>20 process with which they would close their books.</p> <p>21 They had a daily trial balance, and part of that</p> <p>22 was making sure the books and records were clean,</p> <p>23 and he mentioned that he thought at the end of</p> <p>24 every one of those days it was correct.</p> <p>25 We asked him if the MTS system</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 P. Vinella</p> <p>2 produced the 3-3 calculation, which he confirmed</p> <p>3 that it did.</p> <p>4 We asked him who was responsible for</p> <p>5 reviewing 3-3 calculations, and he said it was</p> <p>6 basically his area, and then it would be sent over</p> <p>7 to the reg reporting group.</p> <p>8 We asked him about the different</p> <p>9 types of customer accounts that were kept in MTS.</p> <p>10 And so he mentioned that there were prime broker</p> <p>11 accounts, PIM accounts and PAM accounts.</p> <p>12 We asked him how they segregated the</p> <p>13 accounts at the depositories and at the banks, and</p> <p>14 we relied on that as well.</p> <p>15 We asked questions about the 19th</p> <p>16 specifically, what his -- you know, was Lehman</p> <p>17 Brothers still in business in the morning or the</p> <p>18 afternoon, or when it stopped. We relied on some</p> <p>19 of his recollections on that area.</p> <p>20 And we talked a lot about account</p> <p>21 setups and how customer accounts were identified</p> <p>22 with an MTS, and what processes were in place to</p> <p>23 assure that they were set up correctly.</p> <p>24 I think that is a general overview of</p> <p>25 what we relied on.</p> <p>TSG Reporting - Worldwide 877-702-9580</p>

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Q What did Mr. Policke tell you, if anything, about the chaos within Lehman and Lehman systems in the week leading up to Lehman's insolvency, LBI's insolvency on the 19th?

MS. NEUHARDT: Objection to form.

A He mentioned that one of the struggles for him was that a lot of the prime broker clients were actually clients of LBIE. Because there had been a change in some regulations, that it seemed more beneficial to have U.S. prime broker clients, clients of LBIE. So there were some issues there about client assets that were either in MTS or ITS, and there was no longer an LBIE to face off with.

But they were able to control that, because all the data was actually in the systems that they had. He believed that the settlement clearance function of trades coming in and out, they were able to do. They didn't seem to have a lot of settlement breaks.

They did have a lot of account transfers that were going -- you know, accounts that were not buying and selling assets but were moving their assets to other broker dealers, and

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that towards the end of the day on the 18th, that the ACAT system, which is a Depository Trust Company facility that allows you to transfer these assets and registration of the assets between broker dealers, actually got bogged down.

So, there was a lot of volume on that, and it was primarily the Lehman Brothers assets that were moving to other areas. There was a lot of unwinding of tri-party repos, but they were able to do that successfully.

So, the volumes were extremely high. There was a lot of unusual activity, compared to the week previously. But he felt very comfortable at the end of every day, they were able to tie out their books and records. In fact, he used the term, they were able to balance their accounts every single day up until the 19th.

It turns out from his recollection that the morning of the 19th, they opened up business as usual. There were transactions coming in and out of the systems. It wasn't until later in the morning when JPMorgan Chase turned off access to their systems, where -- that's really when chaos started, because they no longer had the TSG Reporting - Worldwide 877-702-9580

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ability to see what was settling and clearing at Chase. They no longer had the ability to see the balances in their accounts.

At that point, they felt they were just totally flying blind.

Q Did Mr. Policke tell you that he was able to balance his accounts on the 19th at the close of the day?

A No. In fact, he mentioned he was not able to balance his accounts.

Q But he told you he was able to balance his accounts at the close of the day on the 18th?

A As of the 18th. It was a very late close, I should point out. As he kind of talked, he said the end of the 18th and the beginning of the 19th were pretty much at the same time.

Q I think we have all been there. Did Mr. Policke explain to you what he meant by close his accounts?

A Well, when you -- closing your books basically in the industry means that you are able to reconcile your positions. It doesn't mean there are not errors. What it means is you have

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identified the errors and that you are able to take the appropriate action with those errors, which typically means putting things into a suspense account.

But they were able to see all the trades that cleared, all the trades that didn't clear. They were able to recognize any discrepancies within the depository boxes versus their internal systems.

And one of the other things that happened during that week that Mr. Policke mentioned was that the DTC at that point wanted to have money upfront for all the settlements that day, so they had to do projections of settlements and they were able to do that correctly.

Q You said Mr. Policke also told you that the c3 calculation was essentially his area, his responsibility; is that correct?

A For the fixed-income instruments that were kept on MTS. He also mentioned, which I failed to point out, that they were able to successfully compute the 3-3 reserve calculation as of the 16th, and as of the 17th, in addition to being able to do the normal 3-3 calculation that

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1 P. Vinella
2 would have been as of the 12th that was performed
3 on the 15th.
4 **Q Did you ask Mr. Policke what he meant**
5 **by successfully computing the reserve computation**
6 **as of the 16th and 17th?**
7 A I didn't ask him to clarify what
8 success meant. To me it was obvious that he
9 believed that the numbers that came out were
10 correct.
11 **Q Did you ask Mr. Policke whether he**
12 **was aware of the FID accounts that were seized by**
13 **Chase on the 19th?**
14 A I don't mean to interrupt you. Can I
15 take another bio break?
16 **Q Please.**
17 A Otherwise, I will start talking too
18 fast again.
19 (Recess taken.)
20 (Recess.)
21 MR. OXFORD: Back on.
22 Can you read back my last question?
23 (Record read.)
24 A Yes.
25 **Q What did Mr. Policke tell you in**
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1 **P. Vinella**
2 **connection with those FID securities?**
3 A We asked him, first of all, did he
4 know about the issue that had been raised in the
5 McIsaac report, and he said he was aware of that,
6 that all of those assets were maintained on the
7 MTS system; that they were in connection with the
8 broker dealer business -- excuse me, the prime
9 broker business, and that he was not -- he did not
10 know if they had actually been seized or not
11 seized on the 19th.
12 His recollection was that when the
13 system, when the system access went dead, or they
14 wouldn't -- Chase would no longer allow access to
15 their systems, at that point they didn't know what
16 the condition of the securities were, and they had
17 discussion throughout the day with Chase trying to
18 get access reconnected.
19 But he said that that was
20 approximately the right amount of assets in terms
21 of cash and collateral, and again, that they were
22 primarily prime brokerage assets that were fed
23 eligible.
24 **Q But Mr. Policke told you he simply**
25 **didn't know whether or not Chase had seized the**
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1 **P. Vinella**
2 **assets that Mr. McIsaac references in the FID**
3 **securities section of his report?**
4 A He said that as of the 19th, he was
5 not aware of the disposition of those assets.
6 **Q Did Mr. Policke, subsequent to the**
7 **19th of September, 2008, come to any knowledge as**
8 **to whether or not those same FID securities**
9 **references by Mr. McIsaac in his affidavit had in**
10 **fact been seized by Chase?**
11 A I think he mentioned after the fact
12 that Chase had seized the assets.
13 **Q Did Mr. Policke tell you when he came**
14 **to learn that Chase had seized the assets?**
15 A As we discussed during the 19th, he
16 mentioned that the access to the systems had been
17 cut off, that the clearing accounts were,
18 quote/unquote, frozen, and what he thought that
19 meant was that they didn't have access to the
20 activity going through the clearance accounts, but
21 he did not know -- no one was telling him what was
22 going on with the customer accounts or even the
23 other accounts they maintained at Chase at that
24 point.
25 His recollection was, again, after --
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1 P. Vinella
2 you know, after the fact. He didn't mention if it
3 was the 22nd or the 23rd, but it was sometime
4 after the 19th.
5 **Q And Mr. Policke told you that he**
6 **learned sometime after the 19th of September,**
7 **2008, that Chase had seized the FID securities**
8 **referenced in Mr. McIsaac's affidavit; correct?**
9 A Yes.
10 **Q And did Mr. Policke tell you as to**
11 **what his knowledge was as to the date as of which**
12 **Chase seized those FID securities?**
13 A I don't think we discussed those, as
14 I remember.
15 **Q Did you ask him if he knew when Chase**
16 **seized the FID securities?**
17 A Again, as of -- in reference to the
18 19th, the thing that Mr. Policke talked about was
19 the system being -- access to the system being
20 denied and that the clearing accounts were frozen.
21 I don't know exactly when he learned that they
22 were seized or what day they were seized on. I
23 don't know that we asked that question.
24 **Q Can you tell me, sir, as an expert in**
25 **15c3, what would be the requirement under c3 if**
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<p style="text-align: right;">Page 142</p> <p>1 P. Vinella</p> <p>2 the condition and control of those customer assets</p> <p>3 could not be ascertained on a particular date?</p> <p>4 A Well --</p> <p>5 THE WITNESS: Did you --</p> <p>6 MS. NEUHARDT: You can answer. I am</p> <p>7 just objecting to the form of the question.</p> <p>8 A The requirement is that it's</p> <p>9 considered a good control location, so if you have</p> <p>10 evidence that it's not a good control location,</p> <p>11 then you have to treat it differently in the 3-3</p> <p>12 calculation.</p> <p>13 There is not a specific definition of</p> <p>14 what that kind of evidence would be. There is a</p> <p>15 definition of what a good control location is in</p> <p>16 terms of, in the sense that you can get prompt</p> <p>17 delivery of your assets without any financial</p> <p>18 consideration.</p> <p>19 So, if they believed they were not</p> <p>20 going to be able to promptly get those assets</p> <p>21 without consideration, then they would have to</p> <p>22 treat that differently.</p> <p>23 Q Okay. If, Mr. Vinella, there was</p> <p>24 uncertainty as to whether or not LBI had control</p> <p>25 for the securities at Chase, the securities that</p> <p style="text-align: right;">TSG Reporting - Worldwide 877-702-9580</p>	<p style="text-align: right;">Page 143</p> <p>1 P. Vinella</p> <p>2 Mr. McIsaac references, what would be the</p> <p>3 requirement under 15c3 with respect to those</p> <p>4 securities?</p> <p>5 A If they had questions around the</p> <p>6 ability to promptly get those back, the correct</p> <p>7 treatment would be to now put collateral up in the</p> <p>8 reserve -- excuse me, put cash or collateral in</p> <p>9 the reserve account to account for that they would</p> <p>10 no longer be considered good control locations.</p> <p>11 Q Did you ask Mr. Policke about</p> <p>12 Woodlands Bank and whether or not he had any</p> <p>13 knowledge whether Woodlands Bank was improperly</p> <p>14 coded as a non-customer?</p> <p>15 A We talked about Woodlands Bank, yes.</p> <p>16 Q Tell me what you recall of the</p> <p>17 conversation with Mr. Policke about Woodlands</p> <p>18 Bank.</p> <p>19 A We asked him generally how customers</p> <p>20 are identified, who was the group in control of</p> <p>21 setting up the customers, was there a separate</p> <p>22 group within operations that would do it for MTS</p> <p>23 and ADP. And how were customers uniquely</p> <p>24 identified within the MTS environment.</p> <p>25 Then we specifically asked about</p> <p style="text-align: right;">TSG Reporting - Worldwide 877-702-9580</p>
<p style="text-align: right;">Page 144</p> <p>1 P. Vinella</p> <p>2 Woodlands Bank.</p> <p>3 Q What did he tell you about Woodlands</p> <p>4 Bank specifically?</p> <p>5 A At that point he was not very -- as</p> <p>6 he put it, he was not in the loop. I guess that</p> <p>7 discrepancy was found much after -- a time after</p> <p>8 the collapse of the broker dealer, so we were</p> <p>9 talking more specifically about controls in</p> <p>10 general as opposed to that specific instance.</p> <p>11 He did know of the Woodlands Bank</p> <p>12 issue, but he didn't know it in any depth.</p> <p>13 Q So he didn't know whether or not</p> <p>14 Woodlands Bank was properly coded as a</p> <p>15 non-customer?</p> <p>16 A He couldn't speak authoritatively to</p> <p>17 that. He only knew that there was an incident</p> <p>18 around Woodlands Bank.</p> <p>19 Q Do you know whether Woodlands as a</p> <p>20 customer was on the ADP system or the MTS system?</p> <p>21 A I think it was on both, because</p> <p>22 Woodlands Bank had mostly fixed-income</p> <p>23 instruments, as I recall, and MTS was the sole</p> <p>24 processing system for MTS.</p> <p>25 Also, in the way that they told us</p> <p style="text-align: right;">TSG Reporting - Worldwide 877-702-9580</p>	<p style="text-align: right;">Page 145</p> <p>1 P. Vinella</p> <p>2 the accounts were set up, they would set up</p> <p>3 customer accounts on basically all the systems</p> <p>4 that they thought would -- based on the types of</p> <p>5 instruments they would trade.</p> <p>6 Q Did you ask Mr. Policke about the</p> <p>7 account coding errors that are noted in the</p> <p>8 Broadridge memo, which is Exhibit 28 to</p> <p>9 Mr. McIsaac's affidavit?</p> <p>10 A We asked if he knew anything about</p> <p>11 that. He pointed out it was an ADP error.</p> <p>12 My recollection was, he wasn't even</p> <p>13 aware of that specific issue. And if he was, he</p> <p>14 basically said it was part of the ADP environment</p> <p>15 and he wouldn't have been responsible for that.</p> <p>16 Q Because Mr. Policke was principally</p> <p>17 responsible for the MTS area?</p> <p>18 A That was his principal area of</p> <p>19 responsibility.</p> <p>20 Q Who was responsible for the ADP</p> <p>21 system?</p> <p>22 A Actually, we never had a chance to</p> <p>23 talk to that person.</p> <p>24 Q Who was that person?</p> <p>25 A I can't even tell you the name right</p> <p style="text-align: right;">TSG Reporting - Worldwide 877-702-9580</p>

1 P. Vinella
2 now without looking back at my notes.
3 **Q Why did you not have the chance to**
4 **talk to the ADP person?**
5 A Again, we were trying to hold these
6 interviews with very short notice over the holiday
7 season, and it was just getting people's time and
8 access.
9 **Q Did you talk to Mr. Policke about the**
10 **439 million of customer securities that are held**
11 **at LBIE that are referenced in Mr. McIsaac's**
12 **affidavit?**
13 A No.
14 **Q Is there a reason you did not?**
15 A Mr. Roden, who was also part of that
16 meeting, addressed that issue directly.
17 **Q Did you talk to Mr. Policke about the**
18 **82 million in payments by customers that were**
19 **seized by Citibank that is referenced in the**
20 **McIsaac affidavit?**
21 A We asked him about the RISC system
22 and was that a books and records system and would
23 the \$82 million make sense being booked on that
24 system, and did that system feed into the 3-3
25 calculation. We asked him about that aspect of
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1 P. Vinella
2 **Q But Mr. Policke didn't tell you about**
3 **when any of these accounts moved?**
4 A We didn't discuss movements of
5 customer assets in terms of accounts.
6 **Q Okay. You told me that Mr. Policke**
7 **had described to you the ACATS, A-C-A-T-S,**
8 **transfers that got bogged down on the 18th. Do**
9 **you remember telling me about that?**
10 A Yes.
11 **Q If those transfers never happened**
12 **because they were bogged down with DTC, should**
13 **they be reflected in the customer reserve formula**
14 **under c3 or not?**
15 A First, I can't say that they weren't
16 transferred. And my understanding was that that
17 happened at night, so again, they could have come
18 back the next day.
19 If they physically did not leave
20 Lehman Brothers' possession, they would be
21 included in the 3-3 calculation.
22 **Q Okay. Turning to Mr. Roden, you met**
23 **with Mr. Roden, David Roden?**
24 A Yes.
25 **Q In the meeting in New York?**
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1 P. Vinella
2 the 82 million.
3 **Q What did he tell you?**
4 A That the RISC system, which is
5 R-I-S-C, was not a books and records system. That
6 it didn't make sense to post positions on that
7 system, and that indeed it was not -- there was no
8 feed from that system into the 3-3 calculations.
9 He wasn't aware of the \$82 million
10 discrepancy.
11 **Q Did you talk to Mr. Policke about**
12 **when the different types of customer accounts**
13 **moved from the LBI broker dealer?**
14 A Could you repeat the question,
15 please.
16 **Q Did you talk to Mr. Policke about**
17 **when the different types of customer accounts**
18 **moved from the LBI broker dealer?**
19 A We didn't specifically talk about
20 types of accounts. We --
21 **Q I thought you said he told you about**
22 **the different types of accounts, prime broker --**
23 A He did discuss the different types of
24 customer accounts that were maintained on MTS,
25 yes.
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1 P. Vinella
2 A Yes.
3 **Q Can you tell me what information**
4 **Mr. Roden gave you that you relied upon in your**
5 **final report.**
6 A His area of responsibility was the
7 ITS system, which was their international trading
8 system, and we asked what type of businesses
9 were -- you know, were supported by the system,
10 how that system related to the ADP system and the
11 MTS system. How customers were set up in the ITS
12 system. How the 3-3 calculation was computed.
13 What his feeling of the operations were during
14 that week, and specifically about the interactions
15 between LBIE and LBI.
16 **Q What was Mr. Roden's responsibility**
17 **with respect to the preparation of the 15c3**
18 **calculation at LBI?**
19 A Again, all of the customer assets
20 that were maintained on ITS would go into a 3-3
21 calculation, and then that 3-3 calculation would
22 be added together with that produced by MTS and
23 ADP.
24 **Q Did Mr. Roden tell you whether he**
25 **thought the c3 calculation performed by Lehman at**
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1 **P. Vinella**
2 **any time during the week ending Friday, the 19th**
3 **of September, 2008, was successful?**
4 A He agreed that he thought it was
5 successful, yes.
6 **Q He agreed with whom, sir?**
7 A Mr. Policke.
8 **Q Did you meet with Mr. Policke and**
9 **Mr. Roden at the same time?**
10 A At the time, yes.
11 **Q Was anybody else in terms of the**
12 **interviewees also in the room at the same time as**
13 **Mr. Policke and Mr. Roden?**
14 A No. They were together, and no other
15 Lehman or Barclay staff was there.
16 **Q Did you talk to Mr. Roden about the**
17 **FID accounts that were seized by Chase as**
18 **referenced in Mr. McIsaac's affidavit?**
19 A No.
20 **Q Why not?**
21 A Our understanding was that those were
22 U.S. assets and Mr. Policke seemed to give a good
23 discussion of that topic.
24 **Q Did you talk to Mr. Roden about the**
25 **Woodlands Bank issue that is referenced in**
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1 **P. Vinella**
2 **whether or not, once LBIE went into bankruptcy on**
3 **September 15, 2008, whether or not LBIE was still**
4 **a good control location under the terms of**
5 **Rule 15c3?**
6 MS. NEUHARDT: Objection to form.
7 A We didn't ask that question.
8 **Q Did you ask Mr. Roden whether or not**
9 **the 439 million of customer securities at LBIE**
10 **were at any point in the week leading up to**
11 **September 19th, 2008, included in the 15c3**
12 **customer reserve calculation?**
13 A We didn't ask that question.
14 **Q Why not?**
15 A We were asking at that point more
16 general questions of controls, and how customers
17 were set up, and how they understood the assets
18 had been segregated.
19 Mr. Roden was not as knowledgeable
20 about the operational aspects around ITS as
21 Mr. Policke was around MTS. Mr. Roden seemed to
22 be very much more focused on systems than on
23 operations, so he didn't seem to be the authority
24 on a lot of these issues.
25 **Q And as an expert in c3, sir, do you**
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1 **P. Vinella**
2 **Mr. McIsaac's affidavit?**
3 A No.
4 **Q And that is the same reason you**
5 **didn't do that?**
6 A The same reasons.
7 **Q Did you talk to Mr. Policke about the**
8 **account coding errors referenced in the Broadridge**
9 **memo?**
10 A For the same reason, we didn't ask
11 him as well.
12 **Q I think you told me you did ask**
13 **Mr. Roden about the 439 million of customer**
14 **securities that were held at LBIE; correct?**
15 A We did.
16 **Q What did Mr. Roden tell you about**
17 **that issue?**
18 A He was aware of the issue. We asked
19 how that would have impacted the 3-3 calculation,
20 and he said that the ITS system would have fed the
21 3-3 calculation correctly in terms of any accounts
22 that had been no longer a good control location.
23 However, he wasn't the person that made the
24 decision if it was a good control location or not.
25 **Q Who did make the decision as to**
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1 **P. Vinella**
2 **agree that a bankrupt entity such as LBIE would**
3 **not be considered a good control location under**
4 **the Customer Protection Rules of 15c3?**
5 A I would agree with that.
6 **Q And what effect, sir, would LBIE not**
7 **being a good control location under Rule 15c3 have**
8 **on the computation of the reserve formula under**
9 **c3?**
10 A Once it was determined it wasn't a
11 good control location, the value of those assets
12 would be added to the reserve requirement.
13 **Q Did you talk to Mr. Roden about the**
14 **\$82 million in payments to customers that were**
15 **seized by Citibank that Mr. McIsaac discusses in**
16 **his affidavit?**
17 A We did.
18 **Q What did Mr. Roden tell you about**
19 **that?**
20 A We asked if ITS was the
21 multi-currency system, why such a transaction
22 would have been kept on ADP as opposed to ITS.
23 And he wasn't aware of why that decision was made,
24 and he wasn't knowledgeable about the specifics,
25 he wasn't knowledgeable about the specifics of the
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1 P. Vinella

2 82 million.

3 **Q Did you have any other discussions**
4 **with Mr. Roden, other than the ones you have**
5 **testified to, that were the support or basis for**
6 **any facts or opinions that you stated in your**
7 **report?**

8 A We had a subsequent phone call with
9 both Mr. Policke and Mr. Roden. I believe that
10 was either late December, early January. And that
11 was to confirm a number of the -- we asked for the
12 call to confirm a number of the conclusions we
13 came to and substantiate some of the facts again.

14 **Q Okay. Taking the facts first, which**
15 **facts did you resubstantiate with Mr. Roden and**
16 **Mr. Policke in that subsequent call?**

17 A I believe we talked primarily about,
18 again, the multi-currency issues of, you know, why
19 these foreign -- excuse me -- foreign money market
20 funds were not booked on ITS. And did we get that
21 correctly. Mr. Roden agreed with that.

22 We also asked, again, about the
23 account control functions that they had to show
24 that customers would be either set up correctly as
25 customers, or if they weren't, how such errors had

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2 been discovered, and that was -- most of the
3 conversation was around that, that -- you know,
4 how coding errors would have been prevented in the
5 beginning, and if they were found, how would they
6 would be found.

7 **Q Did you have a specific example of an**
8 **account coding error that you were discussing with**
9 **Mr. Roden and Mr. Policke?**

10 A We mentioned the Woodlands Bank as an
11 example.

12 **Q What did they tell you about the**
13 **Woodlands Bank?**

14 A Again, they didn't know any of the
15 specifics. We described the situation where an
16 affiliate of Lehman Brothers had not signed a
17 subordination agreement, was entered in as a
18 non-customer, which was incorrect. How would --
19 how did that take place, and what, what were the
20 normal controls that would be in place to discover
21 that a coding error had taken place.

22 It was more general again about
23 operations than about specifically Woodlands Bank.

24 **Q And what did Mr. Policke and/or**
25 **Mr. Roden tell you about the procedures that were**

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2 **in place to detect such a coding error that you**
3 **have described?**

4 A They had a number of variance reports
5 that they would look at that would show changes in
6 activity across customers. They also mentioned
7 that there was a monthly statement process that
8 would go to customers that wouldn't go to
9 non-customers.

10 There was also a customer
11 relationship management system, which it didn't
12 sound like a real system as much as it may have
13 just been kind of reports that were put together
14 to also show variance in customer activity.

15 By monitoring those, they would be
16 able to see if something was miscoded. And they
17 believed it usually was in a four- to six-week
18 time frame they were able to find any kind of
19 material miscoding problems.

20 **Q Did Mr. Roden or Mr. Policke have any**
21 **specific information about whether or not**
22 **Woodlands Bank was correctly coded as a**
23 **non-customer on LBIE's books and records in the**
24 **week leading up to the 19th of September?**

25 A Again, they weren't aware of any

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2 problems with Woodlands Bank prior to the collapse
3 of LBI, and --

4 **Q When -- I'm sorry.**

5 A And they weren't even aware of any
6 problems until something came up, I guess in the
7 TSA investigation.

8 **Q When something came up in the TSA**
9 **investigation, did Mr. Policke or Mr. Roden, to**
10 **your knowledge, conduct any investigation of that**
11 **issue?**

12 A No, not to my knowledge.

13 **Q Mr. Policke or Mr. Roden didn't tell**
14 **you whether or not there was, in fact, a**
15 **subordination agreement signed by Woodlands Bank?**

16 A They weren't, again, aware of that
17 specific instance.

18 **Q When did this conversation subsequent**
19 **to your in-person meeting in New York, when did**
20 **that take place?**

21 A As I said, it was either the last
22 week of December or the first week of January.

23 There was one other topic that we did
24 talk about that I forgot, which was whether MTS
25 could perform a full trial balance. There was a

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2 disagreement among my team, where they heard that
3 they could do a full trial balance or they
4 couldn't do a full trial balance.

5 **Q What was the response of Mr. Roden**
6 **and Mr. Policke on that issue?**

7 A That both MTS and ITS did not have
8 full accounting capabilities and were not capable
9 of doing a full trial balance.

10 **Q Did anyone take notes of the meetings**
11 **with Mr. Roden and Mr. Policke either in person or**
12 **over the phone?**

13 A In person -- there are notes on that
14 phone call. I didn't take any notes because I
15 was -- and Jeanette Jin who was on that call, may
16 have taken notes. I would have to look at her
17 notes.

18 **Q Okay. Turning to Alex Crepeau. You**
19 **met in person with Alex Crepeau at your**
20 **December 18th meeting in New York?**

21 A Yes, yes.

22 **Q Did you meet with Alex Crepeau on his**
23 **own in terms of interviewees, or were there other**
24 **interviewees in the room?**

25 A As I recall, he was by himself.

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2 **Q What, if anything, did Mr. Crepeau**
3 **tell you that you relied upon in your final**
4 **January 8th report?**

5 A Actually, there was nothing that came
6 up in that conversation that subsequently was
7 included in the report.

8 **Q What was Mr. Crepeau's position at**
9 **LBI?**

10 A I can't recall that right now. I
11 believe it was in either the financial control --
12 I mean the financial reporting group or operations
13 control group, as I recall.

14 **Q Did you ask Mr. Crepeau about the FID**
15 **accounts issues, the seizure by Chase of those FID**
16 **accounts?**

17 A As I remember, he may have been
18 either ring-fenced by the TSA or had some issues
19 that we discussed in the beginning, and I think
20 that subsequently limited a lot of the
21 conversation that we had, so I don't know that I
22 even went into anything that was specific to
23 Mr. McIsaac's report. I think it was more just
24 general, what do you do, who do you report to type
25 of questions.

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2 **Q So, you don't remember whether or not**
3 **you asked Mr. Crepeau about the Woodlands Bank**
4 **issues?**

5 A I can't remember asking him anything
6 specific about the Mr. McIsaac report, or
7 affidavit, I should say.

8 **Q Turning to John Haley, did you meet**
9 **in person with Mr. Haley on December 18th?**

10 A Yes.

11 **Q Was Mr. Haley the only interviewee in**
12 **the room at the time?**

13 A No. Mr. Rodefled was also in the
14 room at the time.

15 **Q About how long did you meet with**
16 **Mr. Haley and Mr. Rodefled for?**

17 A Somewhere between an hour and an
18 hour-and-a-half.

19 **Q How long was the meeting with**
20 **Mr. Crepeau?**

21 A That was actually very short. I
22 think it was a half an hour.

23 **Q And the meeting with Mr. Roden --**

24 A That was an hour, I believe.

25 **Q And the meeting with Mr. Roden and**

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2 **Mr. Policke together was approximately one hour?**

3 A Yes.

4 **Q Did Mr. Haley or Mr. Rodefled provide**
5 **you with any information that you relied upon in**
6 **your January 8th report?**

7 A No.

8 **Q Mr. Rodefled was not employed by LBI**
9 **in 2008; is that correct?**

10 A It's my understanding he wasn't.

11 **Q To your understanding, he was a**
12 **Barclays employee?**

13 A I believe so, yes.

14 **Q Mr. Haley, was he a legacy Lehman**
15 **employee or was he a Barclays employees?**

16 A I believe they are both Barclays
17 employees.

18 **Q Did you ask either Mr. Haley or**
19 **Mr. Rodefled about any of the specific factual**
20 **issues referenced in Mr. McIsaac's affidavit?**

21 A The only thing that we talked about
22 in Mr. McIsaac's affidavit was the repo between
23 Barclays and Lehman Brothers.

24 **Q And what did he tell you about the**
25 **repo between Barclays and Lehman Brothers?**

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MS. NEUHARDT: Objection. He's already testified that he didn't rely on this in his report. So it's beyond the scope of the appropriate testimony.

Q Turning to Lenny Legotte.

MS. NEUHARDT: Legotte.

MR. OXFORD: Legotte?

MS. NEUHARDT: Yes.

A You have to say it with a Bronx accent.

Q I will do everybody a favor and not attempt a Bronx accent.

Did Mr. Legotte provide you, sir, with any information that you relied upon in your final January 8th report?

A I believe the major issues again were around how accounts, customer accounts were set up, and how margin requirements were maintained across the various systems.

Q Was Mr. Legotte a legacy Lehman employee?

A I believe he was.

Q Do you know what his position was at Lehman?

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A He was in the operations area, and I think specifically around margins and margin management.

Q Did you talk to Mr. Legotte about any of the factual issues that were raised by Mr. McIsaac in his affidavit?

A Not to my knowledge, no.

Q You don't remember talking to him about the seizure of the FID accounts by Chase?

A No. I don't remember that, no.

Q You don't remember talking to him about the improper coding of Woodlands Bank as a non-customer?

A Not specifically Woodlands Bank.

Q Did you talk generally with Mr. Legotte about the improper coding of customers as non-customers?

A We did talk about that.

Q Tell me about that discussion, please.

A Well, again, the issue was how could you -- how are you able to monitor margin requirements across various systems, how was a customer identified. Was there one customer ID or

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were there multiple customer ID's in the various systems.

So, we got a lot into just how a customer's instantiated in the various systems and how he would use those reports.

And then we asked him, again, if there was an error, what did he -- what kind of processes would he have that would show that there was an error.

Q What did he tell you about the processes that he had to detect such an error?

A Well, again, there were these variance reports that if there was a customer that wasn't identified as a customer, margin requirements would be off, compared to what they knew from a separate calculation. If it was done the other way, again, the margin requirements would be different.

So they knew -- I guess they had a system to monitor margins across the entire firm.

Q Did Mr. Legotte have any information about whether or not Woodlands Bank was improperly coded as a non-customer?

A We didn't discuss that with him, I

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don't believe.

Q You didn't ask whether or not he had any specific knowledge as to the correctness or otherwise of the coding of Woodlands Bank as a non-customer?

A We didn't discuss Woodlands Bank with him directly. I think, again, if I can just kind of say this for all the interviewees, Woodland Bank was an error that showed up in December, late December of 2008. Most of these people, as I understood it, did not have access to the Lehman Brothers systems at that point. They were working with Barclays' system.

Woodlands Bank was a Lehman Brothers affiliate, and we didn't have access to the people that were involved in the TSA aspect of finding these kinds of problems, so it didn't -- it wasn't surprising to us that we didn't ask specifically about Woodlands Bank, because it didn't seem to be something that these people would know about.

Q Did you ask Mr. Legotte about the account coding errors that were noted in the Broadridge memo in Exhibit 28 to the McIsaac affidavit?

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A We asked about that, but we didn't qualify that as an account coding error. That is actually software problems, not a miscategorization of a customer account as non-customer or vice versa.

We asked him if he was aware of any of these issues around the ADP allocations, pre-allocations of the 3-3 calculation, and he was aware that such -- that there was such a problem, but he wasn't in the loop of how that problem was resolved.

Q Did he tell you who was in the loop of how that problem was resolved?

A He suggested that we talk to people in technology.

Q Did he give you specific names?

A He did give us the name of a woman, and I can't remember her name right now, who I believe was in charge of systems at Lehman Brothers at the time that Lehman Brothers went into liquidation.

Q Did you talk to that person whose name you can't recall sitting here today?

A We did have a call with her, yes.

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Q Tell me everything that you remember about that call.

A That she had come from a non-financial institution, three months before she was at Lehman Brothers, and knew basically zero about the broker dealer business, so after being nice a few minutes, we decided that was enough of a phone call.

Q Safe to say you did not rely upon --

A No.

Q -- anything you learned in that conversation --

A No.

Q -- in your final report?

A She was very nice, but no information.

Q Do you know if there are notes of your meeting with Mr. Legotte?

A There are notes, yes.

Q Who took those notes?

A I believe Jeanette Jin had notes, and Sergio Godinho has notes.

Q Did you talk to Mr. Legotte at any time after your in-person meeting?

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A Not that I recall, no.

Q Did you talk to Mr. Haley or Mr. Rodefeld at any time after your in-person meeting?

A I don't believe so, no.

Q You testified early on the 18th of December you also met with Dan Flamming; is that correct?

A Yes.

Q Did you meet with Dan Flamming along with other interviewees or just Mr. Flamming?

A Just Mr. Flamming.

Q Did you rely in your final report, sir, on anything that Mr. Flamming told you in that December 18th meeting?

A Yes.

Q Tell me, please, what you relied upon.

A We asked him about the operating environment from the week of the 15th through the 19th. We asked him about how he felt the integrity of the operations and the operational reports were through that week. And we asked if he was involved in the 3-3 calculations.

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Q What did he tell you about those issues, sir?

A There was one other issue I should -- what systems did he rely on for his business.

Q Taking first the operating environment, sir. What did Mr. Flamming tell you about the operating environment that week?

A He said it was quite stressful, in volumes that he hadn't experienced before, that throughout the business day, I think his word was we were flying blind or something to that effect. That billions of dollars of cash was going out the door, and it wasn't clear during the day where that money was going and why such large sums were going out.

And that he was in close contact with Paolo Tonucci, the treasurer, throughout the day, so that they could make cash estimates of where they would be at the end of the day.

When we asked him were they able to balance their books at the end of the day, he said yes, by the end of the day everything was clean, but during the day it was very, very stressful.

Q What did Mr. Flamming tell you about

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<p>1 P. Vinella</p> <p>2 the 3-3 calculation?</p> <p>3 A He was not involved in the 3-3</p> <p>4 calculation. That was outside of his area.</p> <p>5 Q What did Mr. Flamming tell you about</p> <p>6 the systems that he relied upon?</p> <p>7 A They got position data out of ITS,</p> <p>8 MTS and ADP. And they had their own system that</p> <p>9 they used for cash movements. So, they would take</p> <p>10 the balances out of the back office processing</p> <p>11 systems, put it into their system that would do</p> <p>12 projections, and then also physically move cash</p> <p>13 between bank accounts.</p> <p>14 Q Did you ask Mr. Flamming about any of</p> <p>15 the factual issues raised by Mr. McIsaac in his</p> <p>16 affidavit such as the FID account seizure by</p> <p>17 Chase?</p> <p>18 A We did ask him generally about</p> <p>19 account seizures, because, again, they had cash</p> <p>20 balances. He wasn't aware of many of</p> <p>21 Mr. McIsaac's issues.</p> <p>22 Q Was he aware of any of the issues</p> <p>23 that Mr. McIsaac states in his affidavit would</p> <p>24 result in an adjustment of the reserve formula as</p> <p>25 of 9/19?</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 P. Vinella</p> <p>2 MS. NEUHARDT: Objection, form.</p> <p>3 A He was not aware of it. That was</p> <p>4 outside his area of responsibility.</p> <p>5 Q Okay. Have we covered all of the</p> <p>6 interviewees that you met with, sir, at the</p> <p>7 meeting on the 18th of December?</p> <p>8 A If I could just check the notes.</p> <p>9 I believe that is the extent of the</p> <p>10 interviews.</p> <p>11 Q Okay. Just so the record is clear,</p> <p>12 sir, can you tell me what the exhibit number is on</p> <p>13 the set of notes that you just picked up.</p> <p>14 A 592.</p> <p>15 MS. NEUHARDT: Is that the only set</p> <p>16 you referred to, to figure out the answer to</p> <p>17 his question?</p> <p>18 THE WITNESS: Yes.</p> <p>19 Q Subsequent to the meeting with</p> <p>20 Mr. Flamming, on the 18th of December, did you</p> <p>21 talk to him again in connection with your report?</p> <p>22 A No, we did not.</p> <p>23 Q Who was the -- who is the next</p> <p>24 interviewee after your December 18th meeting, sir?</p> <p>25 And again, my question is limited to interviewees</p> <p>TSG Reporting - Worldwide 877-702-9580</p>
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<p>1 P. Vinella</p> <p>2 who provided you with knowledge upon which you</p> <p>3 relied in your final report.</p> <p>4 A Okay. I believe the next call was</p> <p>5 with Tony Stucchio.</p> <p>6 Q Is that S-T-U-C-C-H-I-O?</p> <p>7 A C-C-I-O.</p> <p>8 MS. NEUHARDT: I think he got the</p> <p>9 spelling right.</p> <p>10 MR. OXFORD: Can we have me being</p> <p>11 right on the record?</p> <p>12 Q When you spoke to Mr. Stucchio, sir,</p> <p>13 was it in person or on the telephone?</p> <p>14 A It was on the telephone.</p> <p>15 Q When did that happen?</p> <p>16 A I believe that was early January.</p> <p>17 Q And did you speak to Mr. Stucchio</p> <p>18 only on one occasion?</p> <p>19 A On the one occasion, yes.</p> <p>20 Q Who was on that telephone call, sir?</p> <p>21 A I believe from LECG, besides myself,</p> <p>22 Jeanette Jin, Andrea Calderoni and Sergio Godinho,</p> <p>23 and then Ms. King was on the phone, and I believe</p> <p>24 also Ms. Neuhardt was on the phone, but I don't</p> <p>25 remember that, but I believe so.</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 P. Vinella</p> <p>2 Q Approximately how long did this</p> <p>3 telephone call last?</p> <p>4 A Somewhere between 45 minutes and an</p> <p>5 hour.</p> <p>6 Q What information did Mr. Stucchio</p> <p>7 provide to you that you relied upon in your final</p> <p>8 report, sir?</p> <p>9 A We asked what his position was, and</p> <p>10 he -- basically all regulatory reporting I think</p> <p>11 reported in to him at that point, so the net</p> <p>12 capital as well as the 3-3 calculations.</p> <p>13 We asked was he hands on on the</p> <p>14 calculations, and he said during that week he was.</p> <p>15 We asked about specifically every one</p> <p>16 of the items in the McIsaac report, and asked his</p> <p>17 recollection about whether those events happened,</p> <p>18 and if they did, how they were resolved.</p> <p>19 We asked him about the general</p> <p>20 operating environment that week, and at that point</p> <p>21 I think that is kind of the limit of the questions</p> <p>22 we asked.</p> <p>23 Q Tell me, sir, what Mr. Stucchio told</p> <p>24 you about the items in Mr. McIsaac's affidavit</p> <p>25 that you discussed with him, please.</p> <p>TSG Reporting - Worldwide 877-702-9580</p>

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A With relation -- with regard to the FID accounts, we asked, you know, was he familiar with the issues. He mentioned he was.

We asked when did Chase notify Lehman Brothers that there was -- they had frozen these assets or seized the assets. He was not aware of that on the 19th. He believe that happened again after the fact.

He said that they were on the phone constantly with Chase trying to figure out exactly what was going on, and finally Chase refused to answer their phone calls. Therefore, they didn't know what the status of the situation was.

He was also involved in the -- in trying to come up with the 3-3 calculation over the weekend that would have been as of the 19th, and being part of the overall discussion about discrepancies that had to be fixed because they were trying to put one together.

So his recollection was that the -- on the date of the 19th, they weren't sure exactly what the status of assets were or were not. He did confirm there was a no lien letter and that there was no indication that these assets were at

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risk at that point.

And I -- he basically confirmed the overall size of the amount of assets that were maintained in the FID accounts.

Q Did you raise any other of the issues that are discussed in Mr. McIsaac's affidavit with Mr. Stucchio?

A We talked about the \$2.3 billion in Mr. McIsaac's report that reportedly was associated with an LBIE client that was that was executed through LBI here in the United States. We asked if he was aware of that. He said that he was very well aware of that and that that had been resolved. It was not a customer obligation, but that it was an obligation between LBI and LBIE, and it should have never been in the reserve calculation, and that was correctly treated.

We asked about the \$82 million at Citi. His recollection was that was such a small payment of money that on the 19th they weren't even thinking about things like that, they were just trying to get the calculation done. But he does not recall that -- whether there was a no lien letter with Citi at that point, and he wasn't

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sure when Citi actually seized those. He didn't believe that they were actually seized on the 19th, but the following week.

We also asked about the overdraft, at which point he said there was no overdraft. That was a mistake by Chase, and that Chase actually changed the amount of overdraft several times throughout the morning, and then finally, when everything seemed to have gotten resolved, that's when Chase stopped answering the phone. In his mind there should never have been an adjustment for an overdraft because an overdraft never occurred.

We asked him about the account coding errors, and he was, again, not aware of specifically about Woodlands Bank, and he didn't believe that the coding errors were a major problem. He wasn't with Barclays, and I don't believe he was involved in any of the subsequent cleaning of the books and records, so I don't remember him having any knowledge of Woodlands Bank specifically.

Q But Mr. Stucchio, he did not believe that coding errors were a major problem?

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A That was his thing. He said we have all kinds of operational controls that would find these things if they happened. He didn't think they would be widespread.

Q He didn't have any specific knowledge as to whether or not despite the controls, there was miscoding for Woodlands Bank where they were reflected as a non-customer when it should have been a customer?

A Exactly.

Q Did you discuss with Mr. Stucchio the errors that are reflected in the Broadridge memo, Exhibit 28 to the McIsaac affidavit?

A We did talk about the Broadridge errors. Again, he knew there was an issue dealing with the pre-allocation and allocation to the 3-3 buckets, but he wasn't aware of any significant impact of that, other than the fact that there was an error.

Q Did Mr. Stucchio tell you whether or not the error of which he was aware in connection with the Broadridge memo would have had an impact on the reserve calculation had it been corrected?

A I believe that the error was actually

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2 found after Lehman Brothers liquidated. I am not
3 sure exactly when Mr. Stucchio's tenure with
4 Lehman Brothers and/or Barclays ended. So, I
5 think he was aware there was an issue, but I don't
6 think he was aware of the magnitude of the issue
7 or how it was being proposed to be solved.

8 **Q And do you have notes of that**
9 **conversation with Mr. Stucchio, sir?**

10 A Yes, we do. Yes.

11 **Q Did you talk to Mr. Stucchio -- I**
12 **think you said you only talked to him on one**
13 **occasion; correct?**

14 A One occasion.

15 **Q The next and possibly the final**
16 **interviewee I have noted down is a Joel**
17 **Potenciano? Is that P-O-T-E-N-C-I-A-N-O?**

18 A That is the way I believe it's
19 spelled.

20 **Q Did Mr. Potenciano provide you with**
21 **any information on which you -- upon which you**
22 **relied in connection with your final January 8th**
23 **report?**

24 A Yes.

25 **Q Tell me what that information was,**
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1 **P. Vinella**
2 **sir.**

3 A Well, Mr. Potenciano appeared to be
4 the person that was responsible for reviewing --
5 well, first, confirming the fact that a 33
6 calculation had been performed, and then reviewing
7 it to insure that it was reasonable.

8 So, we relied on his recall of the
9 week of the 15th quite heavily. He -- we went
10 through every point in Mr. McIsaac's report.

11 We asked him also about the operating
12 environment the week of the 15th, and he actually
13 was aware of some of the fixes that were trying to
14 be implemented post the 19th, so not only the week
15 after the 19th were they trying to do the 3-3
16 calculation, but even Woodlands Bank and all of
17 that.

18 Excuse me. You mentioned something I
19 have to correct. We also talked to Alastair
20 Blackwell on the phone sometime between -- I think
21 it was either right before Tony Stucchio or right
22 after Tony Stucchio.

23 **Q Okay. We will get to that. Thank**
24 **you for that clarification. I will come to**
25 **Mr. Blackwell when we are finished with Mr.**
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1 **P. Vinella**
2 **Potenciano.**

3 **What did Mr. Potenciano tell you with**
4 **respect to the errors in the c3 calculation that**
5 **are identified in the McIsaac affidavit?**

6 A We talked about the FID accounts.
7 His recollection was that in the morning, when
8 they were -- when the business day started, they
9 were actually transacting through the Chase
10 clearing accounts. There was no reason to believe
11 that those -- that any of the accounts at Chase
12 were in jeopardy. At that point there was no lien
13 letter. Customer assets were still segregated.

14 And that at some point in the late
15 morning, when the systems were -- when access to
16 systems was denied by JPMorgan Chase, they had
17 verbal conversations with Chase, and Chase was
18 telling them yes, that we are still clearing and
19 settling some of your securities.

20 And that at some point in the morning
21 Chase just decided not to communicate anymore, and
22 they had no idea of where they were, and at that
23 point, the decision was made that it made sense to
24 file for liquidation, because they no longer
25 could -- could no longer conduct business in any

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1 **P. Vinella**
2 reasonable way.

3 So, whether assets had been seized or
4 not seized, he wasn't aware of it at the 19th, but
5 they were definitely aware that they didn't have
6 any access to their clearing boxes or the
7 collateral and cash that was kept at JPMorgan
8 Chase, and that JPMorgan Chase was no longer
9 communicating to them even over the phone. That
10 was it on the FID accounts.

11 Around the -- let me address this in
12 the correct order. Let me look at my report so I
13 can keep this straight.

14 In terms of the coding errors, he was
15 aware of the Woodlands Bank. We asked was that
16 indeed an affiliate that did not have a
17 subordination letter. He said that there was no
18 subordination letter at that time when the error
19 was discovered.

20 We asked were they included in the
21 3-3 calculation, and he said he did not think they
22 were included in the 3-3 calculation, as they
23 should have been treated as a customer without the
24 subordination letter.

25 We asked was the mistake that there
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should have been a subordination letter and they should not have been treated like a customer, or was it miscoded. He mentioned that when LBI -- the holding company, LBHI, when they went into receivership, they started to transition a number of the affiliates from customer to non-customer, and there was a queue they were trying to go through to get the subordination letters executed.

He was not aware of whether Woodlands Bank was in that -- was in that queue, although he doubted it. Since it was a bank, it would be very difficult to have a subordination letter of a bank to a broker dealer. Most likely the bank regulators, he thought, wouldn't approve.

So, he thought the error was just that they were miscategorized as a non-customer.

Q Did Mr. Potenciano tell you whether or not to his knowledge Woodlands Bank had ever signed a subordination letter?

A No, he didn't believe they had ever signed a subordination letter. Again, he pointed out this was discovered in the December time frame, and as he put it, people at that point were going through all the accounts with a fine-toothed

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comb. This was the one that had come up.

Woodlands Bank also had been -- it was only entered into the system three or four weeks by beforehand. So, we asked him at length how many other customers had been added during the two weeks prior to LBHI going into bankruptcy. He understood that was a small number, less than 100.

Q Mr. Potenciano told you that as far as he was concerned, Woodlands Bank should have been treated as a customer for the purposes of the c3 calculation as of September 19th, 2008; is that correct?

MS. NEUHARDT: Objection, form.

A Based on his understanding of the fact that a subordination letter was not on record and had not been executed.

Q Is your answer to my question, yes, based on his understanding that there was a subordination letter not on record? Correct?

A That there was no subordination letter on record.

Q Thank you.

Did you talk to Mr. Potenciano about the errors noted in the Broadridge memo,

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Exhibit 28 to the McIsaac affidavit?

A We did ask him about that as well.

Q What did Mr. Potenciano have to tell you about that?

A He said that that was an error that had been discovered, I think by actually Barclays in performing their duties, as opposed to something that had been discovered at Lehman Brothers, and that there was an error that was -- if certain accounts were set up in a certain way, that there was a double allocation, which would cause a decrease in the reserve requirement.

Q Mr. Potenciano told you that the issues identified in the Broadridge memo would result in a decrease in the reserve requirement?

A Excuse me, an increase. Thank you.

Q Was Mr. Potenciano able to quantify the increase in the reserve requirement as of 9/19 that would have been required if the errors discussed in that same memorandum had been corrected?

A No. He was not aware, one, that there would have been an error on that date, because, again, it was not the principal DTC

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account that the problems occurred in. It was in an alternative account that wasn't used regularly.

And he had no idea, one again, if there would have been a discrepancy on the 19th or, two, if there was, what the size of that would have been.

Q Did you discuss with Mr. Potenciano the 82 million in the payments to customers that were seized by Citibank?

A We did.

Q What did Mr. Potenciano tell you about that?

A He believed that that actually had been entered into the reserve calculation, to the best of his recollection, and that there wasn't an error in the calculation as a result.

Q Did Mr. Potenciano tell you that he believed the 82 million in payments to customers that were seized by Citibank had been accounted for in Lehman's calculation of the reserve formula in the week of the -- ending on the 19th of September?

A He believed that it was actually correctly accounted for in the reserve

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2 requirements.

3 Now, I don't know if that meant as
4 Mr. McIsaac said that that amount was not in a
5 good control location, therefore it should have
6 been added to the reserve requirement, or that
7 the -- Mr. Potenciano believed and his colleagues
8 that it was a good control location and therefore
9 it didn't have to be added.

10 I don't know what the resolution of
11 that was, but he was aware of it and he said it
12 was correctly treated.

13 **Q Did you ask him whether or not he**
14 **believed that the \$82 million referenced in the**
15 **McIsaac affidavit was still in a good control**
16 **location as of the 19th?**

17 A He confirmed that subsequent to the
18 19th, the following week, that it was seized. But
19 as of the 19th, he -- again, he just said it was
20 correctly treated.

21 **Q But he didn't know whether or not**
22 **that \$82 million had been seized by Citibank on**
23 **the 19th?**

24 A He mentioned that it was seized
25 subsequent to the 19th.

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2 **Q He did not believe it was seized on**
3 **the 19th but subsequent to the 19th; is that**
4 **correct?**

5 A That was his belief.

6 **Q Okay. Did any of these -- let me do**
7 **Mr. Blackwell first.**

8 MS. NEUHARDT: Actually, can we take
9 a break?

10 MR. OXFORD: Yes.

11 (Recess taken.)

12 MR. OXFORD: Back on.

13 **Q Just sticking with Mr. Potenciano,**
14 **for a second, sir, did he tell you when you met**
15 **with him whether or not any balances from the RISC**
16 **system were brought into the c3 calculation the**
17 **week of -- the week ending September 19th, 2008?**

18 A He didn't believe that any data from
19 the RISC system was used in the 3-3 calculation.

20 **Q I think you told me you had a**
21 **subsequent conversation with Mr. Blackwell after**
22 **the meeting on the 18th; is that correct?**

23 A No. We actually talked to him on the
24 initial phone call, sometime in late November, and
25 then we had a subsequent phone call with him after

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2 the meetings on the 18th.

3 **Q Do you remember when the phone call**
4 **took place?**

5 A Again, the last week of December,
6 first week of January, that type of time frame.

7 **Q Approximately how long did the call**
8 **last?**

9 A About 30 minutes.

10 **Q Who was on the call?**

11 A That would have been Jeanette Jin,
12 myself, Ms. King, and Ms. Neuhardt.

13 **Q Do you have any notes of that**
14 **conversation?**

15 A We didn't rely on anything
16 Mr. Blackwell said at that. You asked who I had
17 talked to, so I thought --

18 **Q I appreciate the answer.**

19 **In your testimony, sir, have you**
20 **given an exhaustive account of the interviews on**
21 **which you relied in the creation of your final**
22 **report?**

23 A To the best of my knowledge, those
24 were the people we interviewed that we ended up
25 relying on aspects of those interviews.

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2 **Q Have we covered in your testimony**
3 **today not just all of the individuals but each of**
4 **the conversations you have had with them upon**
5 **which you relied?**

6 A To my knowledge, yes.

7 Excuse me. We had a subsequent phone
8 call with Mr. Potenciano, if I didn't mention
9 that.

10 **Q We will get to that one in a moment.**
11 **Thank you for mentioning that.**

12 **Other than the subsequent phone call**
13 **with Mr. Potenciano that we will talk about in**
14 **just a second, have we exhausted your recollection**
15 **on all discussions with any individuals upon whom**
16 **you relied as a source of material for your expert**
17 **report?**

18 A I believe that is the entire list.

19 **Q And not just the list of people we**
20 **have exhausted, we have also exhausted the**
21 **information that they conveyed to you that you**
22 **relied upon in creating your report; is that**
23 **correct?**

24 A Yes.

25 **Q Thank you.**

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The subsequent conversation with Mr. Potenciano, when did that take place?

A I believe it was three or four days after the initial phone call.

Q Approximately how long did that last?

A My recollection, it was a half an hour or so.

Q Did Mr. Potenciano give you any information in that subsequent conversation that you relied upon in creating your final report?

A It was more to confirm the earlier conversation and understand how to put it in the correct context. Other than that, what we discussed was not really relevant to the report.

Q Did Mr. Potenciano provide you with any additional information that he did not provide you with in his original conversation with you?

A Not at that time, no.

Q At any time subsequent?

A No. I mean it was confirmation of the earlier call.

Q Okay. In any of these meetings, sir, that you have testified about, did anyone provide you with any documents.

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A During the meetings, I don't recall anyone giving us documents, no.

Q Did people provide you with documents in advance of the meetings?

A We had documents that the attorneys had given us that we relied on in terms of prepping for the meetings.

Q Could you take a moment to have your report in front of you, sir, and turn to page 42.

MS. NEUHARDT: Thirty-two?

MR. OXFORD: Forty-two.

Q Do you have that page, sir?

A I do.

Q Do you see it's headed "Exhibit C, Documents Reviewed"?

A Yes.

Q Can you tell me whether or not that is an exhaustive and complete list of the documents that you and your team reviewed in creating your final January 8th report?

A Actually, the exhibit is mistitled. That shouldn't be "Documents Reviewed." It should be "Documents Relied Upon."

So, these are, to the best of my

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knowledge, all of the documents that we relied on in terms of preparing the report.

Q If I understand your testimony correctly, you reviewed other documents but you did not rely upon them in creating your final report?

A That's true.

Q Were there documents, other than the documents listed in Exhibit C, that I now understand to be the documents that you relied upon in your final report, were there documents other than the Exhibit C documents provided to you at any of the meetings with interviewees that we have been discussing today?

MS. NEUHARDT: Objection. A, he's already answered that he didn't get documents from the interviewees, but B, to the extent he didn't rely upon them, they are not discoverable.

Q You said, sir, that you did not receive any documents at these meetings?

A I did not receive any documents to the best of my knowledge.

Q The individuals with whom you met,

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sir, in person, do you recall if they brought documents with them to the meetings?

A To the best of my memory, I don't recall anyone bringing notes or any other types of documents.

Q So, when you were interviewing with them, they weren't referencing written materials of any kind?

A Not that I recall, no.

Q Did you ask any of the individuals whom you interviewed and upon whom you relied, whether or not they had any documentary support for information that they provided to you?

A We didn't ask the question that way.

Q How did you ask the question, sir?

A We asked if they had access to specific reports based on our knowledge of how operations work.

Q And what was the answer to those questions?

A In some cases they did have the ability to reproduce those reports and in some cases they didn't have the ability.

Q Did you ask them to reproduce any

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2 **specific reports?**

3 A Yes.

4 **Q Which reports did you ask them to**
5 **reproduce?**

6 MS. NEUHARDT: Objection. To the
7 extent he didn't rely upon them, it's
8 irrelevant, so you should ask the
9 foundational question of whether he ended up
10 relying on anything that, that he asked them
11 to reproduce.

12 MR. OXFORD: Well, we can come back
13 to this. I actually disagree with you, I
14 think, about the scope of that stip, but we
15 can discuss that at a break, and we can take
16 it up afterwards.

17 MS. NEUHARDT: Okay.

18 **Q Did you have any -- withdrawn.**
19 **The reports that you asked your**
20 **interviewees to run, sir, did you rely upon any of**
21 **them in your final report?**

22 A We did, and they are listed in the
23 exhibit.

24 **Q Could you direct my attention to**
25 **those reports, please?**

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2 A They would have been the focus report
3 that is attached as an exhibit, Exhibit D, and
4 also the 3-3 calculations as of the 16th and the
5 17th, which I believe are also attached as
6 exhibits.

7 **Q You are referencing in terms of focus**
8 **reports, sir, Exhibits D and E --**

9 A Yes.

10 **Q -- to your final report; is that**
11 **correct?**

12 A Right. Yes.

13 **Q And these were run specifically at**
14 **your request; is that correct, sir?**

15 A I don't know if these were run at my
16 request or were copies of existing focus reports
17 that existed.

18 **Q Okay. Tell me what you know about**
19 **the creation of Exhibit F, sir.**

20 A My understanding of Exhibit F is that
21 this was the reserve calculation, the 3-3 reserved
22 calculation that was performed by Lehman or LBI as
23 of the 16th and as of the 17th. This one seems to
24 be only the 17th. I have got an old copy.

25 We should have attached the one as of
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1 **P. Vinella**
2 the 16th, if it's not here, because we did rely on
3 that, and it was in the same spreadsheet. So I
4 guess it didn't get printed up most likely.

5 MS. NEUHARDT: I will check the
6 original that was served and see what the
7 error is.

8 MR. OXFORD: Okay. I think this was
9 as served, so to the extent --

10 MS. NEUHARDT: Yeah.

11 MR. OXFORD: To the extent we are
12 missing the reliance materials --

13 MS. NEUHARDT: We will send you the
14 16th if it wasn't in what was originally
15 served.

16 MR. OXFORD: Obviously we will have
17 to reserve our rights.

18 THE WITNESS: Oh, the 16th is another
19 column. Oh, okay.

20 MS. NEUHARDT: Yeah.

21 THE WITNESS: Oh, I see it, okay. In
22 the front.

23 MS. NEUHARDT: Is this what you
24 thought you --

25 THE WITNESS: Yeah. This is what we
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2 saw where they had the 16th and 17th.

3 **Q Okay. Let me ask this as a**
4 **foundational question, sir: Did you ask any of**
5 **your interviewees to run reports on which you did**
6 **not end up relying? And I just want a yes or no**
7 **answer to this question at this time.**

8 A Yes.

9 **Q Did you ask any of your interviewees**
10 **for any -- any other document, sir?**

11 MS. NEUHARDT: That is a yes or no
12 question again; right?

13 A They were included in the reports.
14 Those documents and the reports to me are
15 synonymous.

16 **Q Did you ask the people who you**
17 **interviewed to provide contemporaneously created**
18 **documents, by which I mean documents that were**
19 **created at a time prior to the closing of the**
20 **transaction between Barclays and Lehman on the**
21 **morning of Monday, the 22nd of September?**

22 A You will have to rephrase that.

23 MR. OXFORD: Can you repeat that,
24 please, Bonnie.

25 (Record read.)

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1 P. Vinella
2 A If I can rephrase the question to you
3 to see if I get the question right.
4 Are you asking was I -- did I get
5 access to reports that were produced prior to the
6 22nd?
7 Q Or documents or e-mails.
8 A We did, I believe. For instance, the
9 focus reports that we had were produced --
10 Q Right.
11 A -- prior.
12 Q Other than the documents that are
13 actually attached to your report, did you ask any
14 of the people who you interviewed for documents
15 that were created prior to the closing of the
16 transaction?
17 A We did.
18 Q Again, for the moment just yes or no,
19 sir. Did they provide those documents to you?
20 A In some cases yes, in some cases no.
21 Q Other than reviewing the documents
22 that are listed in Exhibit C and interviewing the
23 individuals who you have testified about today,
24 sir, did you do anything else to prepare your
25 report?
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2 papers that were filed last Friday, I believe?
3 A Yes.
4 Q Have you seen any other documents,
5 sir?
6 A Not that I recall.
7 Q I don't see it on your list of
8 documents on Exhibit C, sir. Did you review a
9 brief that was filed by the SEC in connection with
10 the SIPA trustee's allocation motion?
11 A I actually -- I believe I did get
12 that after the 8th, now that you bring that up.
13 Q When did you get it, sir?
14 A I can't -- I -- once the report was
15 done, I was taking a little bit of a break, to be
16 quite frank, so I can't tell you exactly what date
17 I got it or looked at it.
18 Q Have you reviewed that SEC brief,
19 sir?
20 A I looked at it, yes.
21 Q Was there anything in there that you
22 disagreed with?
23 A Again, I don't recall looking at it
24 in any depth, and in fact, I am even having an
25 issue whether I actually saw it or not, to tell
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1 P. Vinella
2 A We looked at other documents that
3 were available in the public domain.
4 Q Which documents, sir?
5 A All of the documents that we used are
6 listed here, so there is news stories, there is
7 discussions of -- you know, there is a 3-3
8 calculation, specifications.
9 Q Right. And my question was intended
10 to, if it did not in fact, exclude the documents
11 that were listed in Exhibit C.
12 Other than the interviews you have
13 testified to, other than the documents that are
14 listed in Exhibit C, and I presume because I don't
15 see them listed in Exhibit C, the documents that
16 are actually attached to your report, did you do
17 anything to prepare your report, sir?
18 A Not that -- everything we relied on
19 is in that list.
20 Q Have you reviewed additional
21 documents that are relevant to your report and
22 Mr. McIsaac's report subsequent to January 8, sir?
23 A I have seen the brief that attorneys
24 filed with respect to this.
25 Q And that is Barclay's opposition
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1 P. Vinella
2 you the truth.
3 Q I can show it to you in --
4 A That would probably help. If you
5 could show it to me, then I can tell you if I
6 actually saw that document or not.
7 Q Okay. We will get to that in a
8 moment.
9 Did you talk to any of LBI's
10 regulators in preparing this report, sir?
11 A No.
12 Q You didn't talk to anybody at the
13 SEC?
14 A No.
15 Q You didn't talk to anybody at FINRA?
16 A No.
17 Q Did any of the -- withdrawn.
18 This report, sir, appears to reflect
19 your opinion as of January 8th; is that correct?
20 A It does.
21 Q It's February 4th, I think, today.
22 MS. NEUHARDT: Fifth.
23 Q Fifth.
24 Do you today have any changes that
25 you wish to make to this report other than the
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<p>1 P. Vinella</p> <p>2 title of Exhibit C?</p> <p>3 A Not -- there is no changes I would</p> <p>4 make as of this time.</p> <p>5 Q Did you do anything to prepare for</p> <p>6 your deposition, sir?</p> <p>7 A I did.</p> <p>8 Q What did you do?</p> <p>9 A First, I reread Mr. McIsaac's</p> <p>10 affidavit. I reread my report. I reread the 3-3</p> <p>11 calculations, as well as the overall 15c3</p> <p>12 regulation.</p> <p>13 I also reviewed notes that I took as</p> <p>14 well as discussed some of the issues with Jeanette</p> <p>15 Jin.</p> <p>16 Q The notes that you reviewed, sir --</p> <p>17 we placed in front of you at the start of the</p> <p>18 deposition the notes that were marked at 592</p> <p>19 through 597. Could you take a few moments, not</p> <p>20 necessarily to read every line, but just to look</p> <p>21 through those and tell me whether those are the</p> <p>22 notes which you reviewed to prepare for your</p> <p>23 deposition.</p> <p>24 A Since I was looking at them as we</p> <p>25 were talking at various points, these are the</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 P. Vinella</p> <p>2 notes we used.</p> <p>3 Q Were there any other notes that you</p> <p>4 used to prepare for your deposition, sir?</p> <p>5 A We reviewed notes to see specifically</p> <p>6 if there were things we had relied on to look at</p> <p>7 the report -- relied on in terms of forming our</p> <p>8 opinions in the report, or my opinions I should</p> <p>9 say.</p> <p>10 Q And you looked at the notes in the</p> <p>11 context of preparing for your deposition, sir; is</p> <p>12 that correct?</p> <p>13 A We were asked to review our notes and</p> <p>14 to highlight the areas of those notes that we</p> <p>15 relied on, and that's the results that you have.</p> <p>16 Q Those are the notes that are</p> <p>17 reflected in Exhibits 592 through 597; correct?</p> <p>18 A Yes.</p> <p>19 Q The notes that you reviewed to</p> <p>20 prepare for your deposition -- separate and apart</p> <p>21 from the request to produce notes that were</p> <p>22 reliance material, the notes that you used to</p> <p>23 prepare for the deposition, sir, were those</p> <p>24 redacted? Did they have the black marks, or not?</p> <p>25 A The only purpose of reviewing the</p> <p>TSG Reporting - Worldwide 877-702-9580</p>
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<p>1 P. Vinella</p> <p>2 notes was actually to go through the redaction</p> <p>3 process.</p> <p>4 Q I see.</p> <p>5 Did you do anything else to prepare</p> <p>6 for your deposition today?</p> <p>7 A I did.</p> <p>8 Q What else did you do?</p> <p>9 A I met with counsel on Wednesday and</p> <p>10 Thursday prior to this deposition today.</p> <p>11 Q Was anyone other than counsel present</p> <p>12 for that?</p> <p>13 A Just the three attorneys here,</p> <p>14 Mr. Amman, Ms. King and Ms. Neuhardt.</p> <p>15 Q You said that to prepare for your</p> <p>16 deposition, you discussed the issues with Jeanette</p> <p>17 Jin; is that correct?</p> <p>18 A Yes.</p> <p>19 Q Tell me what you discussed with</p> <p>20 Ms. Jin.</p> <p>21 MS. NEUHARDT: Objection. I believe</p> <p>22 that is beyond the scope of what is</p> <p>23 discoverable in the stipulation, unless that</p> <p>24 conversation was the source of original</p> <p>25 information relied upon in your report.</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 P. Vinella</p> <p>2 THE WITNESS: No.</p> <p>3 Q You answered no, sir, but I hadn't</p> <p>4 asked the question. Were you answering Ms.</p> <p>5 Neuhardt's question?</p> <p>6 A Yes. She appeared to ask me a</p> <p>7 question, so I answered her question.</p> <p>8 Q Did your discussion with Ms. Jin</p> <p>9 refresh your recollection about any matter that</p> <p>10 relates to Mr. McIsaac's affidavit or your report?</p> <p>11 A It helped refresh it, yes.</p> <p>12 Q Tell me in what respects your</p> <p>13 recollection was refreshed by the conversation</p> <p>14 with Ms. Jin.</p> <p>15 MS. NEUHARDT: You mean with respect</p> <p>16 to topics that ended up in your report?</p> <p>17 A Basically we went through the report,</p> <p>18 we went through Mr. McIsaac's affidavit, and we</p> <p>19 discussed whether we would -- whether we would</p> <p>20 have changed our opinions in any way, or if we</p> <p>21 wanted to further investigate Mr. McIsaac's</p> <p>22 allegations, what type of materials and time</p> <p>23 frames and resources we would need to do that.</p> <p>24 Q Tell me about that discussion about</p> <p>25 if you wanted to further investigate Mr. McIsaac's</p> <p>TSG Reporting - Worldwide 877-702-9580</p>

1 **P. Vinella**
2 **allegations, what materials, time frame and**
3 **resources would you need.**

4 A Can you be a little more specific?

5 **Q With respect, sir, you had the**
6 **conversation, not me. I am trying to establish**
7 **what it is specifically you talked about under the**
8 **topic you just told me about, which was whether**
9 **you --**

10 MS. NEUHARDT: Why don't we read the
11 question back and maybe he can -- maybe if
12 you hear it a second time.

13 MR. OXFORD: I think we need the
14 answer back. Could you read the answer.

15 MS. NEUHARDT: The answer is, can you
16 be more specific.

17 MR. OXFORD: We need the answer at
18 195, line 12 on, please.

19 (Record read.)

20 A I'm understanding the question to
21 talk about the discussion, and the discussion we
22 had, as I mentioned, we would go through the
23 points. Mr. McIsaac made a number of what we
24 considered unsubstantiated claims, and we were
25 discussing what type of materials we would need to

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2 be able to substantiate, one, that indeed an error
3 occurred as alleged by Mr. McIsaac; number two, if
4 an error occurred, would it be a direct
5 dollar-for-dollar impact on the reserve
6 requirements or would it have a lesser impact or
7 maybe an ambiguous impact. And then also, how
8 could we quantify the size of some of these
9 issues.

10 So that was the basic discussion that
11 we had.

12 **Q Okay. What materials would you need**
13 **to substantiate whether or not the errors**
14 **Mr. McIsaac said occurred did, in fact, occur?**

15 A I would have to go through each of
16 the single points. If you want me to do that, I
17 can do that.

18 **Q Sure.**

19 A Well, in the FID accounts, we start
20 with them, and if I can refer to his report, it
21 will make it a little easier for me.

22 **Q Just so the record is clear, that is**
23 **Exhibit 590.**

24 A On the FID accounts, there seemed to
25 be an issue around the amount of securities and
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1 P. Vinella
2 the amount of cash that were kept. Mr. McIsaac I
3 don't believe referenced any exhibit that showed
4 that there was \$630 million of customer securities
5 or \$258 million in cash.

6 There was also an issue of when
7 Lehman Brothers first believed that those accounts
8 were no long good control locations. So in order
9 to look at the specific allegation, we needed, we
10 needed more information.

11 In terms of the account coding
12 errors, that we had an issue with, one, with
13 Woodlands Bank security. Again, the \$534 million
14 doesn't seem to be documented in either the
15 affidavit or the exhibit, that we could find.

16 The next component was these customer
17 errors, he didn't give any specific ones around
18 there, so if he actually had specific instances
19 other than Woodlands Bank that there was a
20 problem, we would have wanted to see that.

21 We also, in Section 38, we couldn't
22 find any evidence of this \$213 million that he
23 wanted to add to the reserve requirement, and it
24 wasn't clear to us if that was a combination of
25 the coding errors as well as the software error,

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1 P. Vinella
2 or that was due just to the software error.

3 Also, it would have been helpful for
4 us to understand exactly when the software error
5 was first discovered. We have an exhibit that
6 shows an e-mail trail of their communications with
7 the vendor Broadridge, but we didn't see when
8 either Lehman Brothers or Barclays suspected that
9 there was an error.

10 In terms of the LBIE assets that were
11 maintained -- I mean the LBI assets that were
12 maintained in LBIE, we just need to see -- we saw
13 a report that was in an exhibit that appeared to
14 be a spreadsheet as opposed to an operational
15 report, and we can't substantiate that that is the
16 right dollar amount, that those were the right
17 securities, that they weren't actually kept in a
18 good control account, and that after LBIE went
19 into administration, that those were transferred
20 to another good control location.

21 So, there is no way for us to
22 validate that indeed those assets were at risk, or
23 if they were at risk, they weren't subsequently
24 moved to a good control location shortly
25 thereafter.

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<p>1 P. Vinella</p> <p>2 In terms of this \$82 million on the</p> <p>3 Citibank account, it was the same situation, we</p> <p>4 just wanted to show -- we didn't see any evidence</p> <p>5 that Mr. McIsaac provided that the account was</p> <p>6 improperly set up with a no lien letter. For</p> <p>7 instance, if it was set up as a trust account, you</p> <p>8 don't need a no lien letter.</p> <p>9 We didn't see any substantiation of</p> <p>10 the \$82 million. So, again, was that really the</p> <p>11 right amount of money? Was it really kept in an</p> <p>12 account that Lehman Brothers did not have good</p> <p>13 control over?</p> <p>14 So, we had a number of those issues.</p> <p>15 The other issue we had was probably</p> <p>16 the biggest issue, was even if you look at all of</p> <p>17 these instances that Mr. McIsaac points out that</p> <p>18 could be issues with the reserve calculation, and</p> <p>19 the requirement, we weren't actually given what</p> <p>20 the account balance was as of the 19th, and we</p> <p>21 didn't -- we don't know what the excess was in</p> <p>22 that account. So, we can't verify that the actual</p> <p>23 account would have been in deficit to the extent</p> <p>24 that Mr. McIsaac says it was.</p> <p>25 Just because you have --</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 P. Vinella</p> <p>2 MS. NEUHARDT: I just want to make</p> <p>3 sure that you -- as you were giving your</p> <p>4 answer, you saw these two as well.</p> <p>5 THE WITNESS: Those were ones we</p> <p>6 didn't have questions about.</p> <p>7 MS. NEUHARDT: I just wanted to make</p> <p>8 sure.</p> <p>9 A And so what we would like to have</p> <p>10 seen is an account balance as of the 19th in the</p> <p>11 reserve account, and then we would have actually</p> <p>12 liked to have seen the effect of not just adding</p> <p>13 these items to the reserve requirement, but</p> <p>14 actually adding it to the credits and possibly</p> <p>15 debits of the requirement, and see how that</p> <p>16 actually would affect the overall calculation.</p> <p>17 So, just to look at Mr. McIsaac's</p> <p>18 information that he had here, there would have</p> <p>19 been a lot more material we would have liked to</p> <p>20 have seen.</p> <p>21 Q Can you turn to paragraph 16 of</p> <p>22 Mr. McIsaac's report.</p> <p>23 A Yes.</p> <p>24 Q It's headed "Safekeeping of Customer</p> <p>25 Securities." Do you see that, sir, on page five?</p> <p>TSG Reporting - Worldwide 877-702-9580</p>
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<p>1 P. Vinella</p> <p>2 A I'm on page five?</p> <p>3 Q Yes, sir.</p> <p>4 MS. NEUHARDT: Paragraph 16.</p> <p>5 A Oh, paragraph 16.</p> <p>6 Q Do you see that, sir?</p> <p>7 Can you read just to yourself</p> <p>8 paragraph 16, please.</p> <p>9 A Okay, yes.</p> <p>10 Q Do you agree with everything that</p> <p>11 Mr. McIsaac writes in paragraph 16?</p> <p>12 A Yes.</p> <p>13 Q There is nothing in there that you</p> <p>14 disagree with?</p> <p>15 A No.</p> <p>16 Q Could you read the next paragraph,</p> <p>17 17, sir.</p> <p>18 A Okay, I have read it.</p> <p>19 Q Do you agree with what Mr. McIsaac</p> <p>20 writes in paragraph 17 of his affidavit, sir?</p> <p>21 A Yes.</p> <p>22 Q There is nothing in there that you</p> <p>23 disagree with, is there?</p> <p>24 A No.</p> <p>25 MS. NEUHARDT: I would just like to</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 P. Vinella</p> <p>2 point out that Mr. Vinella's report was</p> <p>3 focused purely on Mr. McIsaac's analysis of</p> <p>4 the supposed, supposedly necessary</p> <p>5 adjustments. He actually did not opine on</p> <p>6 any of this essentially legal discussion of</p> <p>7 SEC requirements, which we don't even think</p> <p>8 are appropriate topics for expert testimony.</p> <p>9 Leaving that aside, you are kind of</p> <p>10 asking him things that are beyond the scope</p> <p>11 of the report.</p> <p>12 MR. DAKIS: I would like to move to</p> <p>13 strike counsel's testimony from the record.</p> <p>14 MS. NEUHARDT: It's not testimony.</p> <p>15 It's an objection.</p> <p>16 MR. DAKIS: The federal rules allow</p> <p>17 for an objection to form, not a lengthy</p> <p>18 speaking objection.</p> <p>19 I would like to note an objection to</p> <p>20 your objection on the record.</p> <p>21 BY MR. OXFORD:</p> <p>22 Q Could you read paragraph 18, sir, and</p> <p>23 let me know when you are done.</p> <p>24 A Okay, I have read it.</p> <p>25 Q Is there anything in there you</p> <p>TSG Reporting - Worldwide 877-702-9580</p>

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disagree with, sir?

A I agree with it.

Q Next paragraph, 19, please. If you could just let me know when you have read it. Thanks.

A Okay.

Q Do you agree with what Mr. McIsaac writes in paragraph 19, sir?

A I agree.

Q Nothing in there you disagree with?

A Nothing I disagree with.

Q Next paragraph, 20, sir, could you read that.

A Okay.

Q Is there anything in there that you disagree with, sir?

A The only thing I would disagree with is that the computation can actually be run at other times during the week. It doesn't have to only be done on Friday.

So, at least once a week on the close of business on Friday. It doesn't preclude other computations from taking place.

Q Is Mr. McIsaac correct that a

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computation under the reserve formula is typically made at the close of business on a Friday in the industry?

A He doesn't say it that way. That's why I was pointing it out.

Q Is it accurate to say that the reserve formula computation is within the industry typically done after the close of business on Friday?

A If you are not using an alternative method, so the big broker dealers, that would be true?

Q So it would be true for LBI, for example?

A Yes.

Q Could you read paragraph 21, please, and let me know when you are done.

A Okay, I have read it.

Q Do you agree with what Mr. McIsaac writes in paragraph 21?

A No.

Q What is it that he writes in paragraph 21 that you disagree with, sir?

A First, I think he mischaracterizes

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the concept of a free credit balance. It's not money that is an obligation to the customer. It's the customer's money. The broker dealer has no rights to that money. Therefore, there is no obligation to repay the customer.

So, I think that is a misrepresentation of the concept of free credit balances.

I am not aware of the term of art "customer property" in regards to the SEC regulations. I know that in terms of SIPA. So, I don't know why that term would have been used there.

It -- the regulation is actually fairly -- the 3-3 calculation is actually very simple. He should have just listed the eight credits. But I'm assuming here he's taking about money associated with the lending of customer securities through a rehypothecation agreement, and I don't think what he actually puts here, the use of customer property, is specific enough or accurate.

There is no reserve that I know of for operational inefficiencies. There is a

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reserve for failure to receive securities. I would not call a failure to receive as an operational deficiency. An operational deficiency to me is two people doing one person's job.

So, I think the entire way that the credit side of the reserve calculation, or formula as he calls it, is wrong. And I would disagree with the way the debit items have been categorized. Even though he listed it as an exhibit, he should have just listed the eight credits and six debit items, rather than trying to paraphrase it.

Q Any other points of disagreement between you and Mr. McIsaac on what he writes in paragraph 21?

A I think I pretty much disagreed with everything, so I have nothing else.

Q Can you read paragraph 22, please, sir.

A Okay, I have read it.

Q Okay. Can you tell me, sir, if you agreed with what Mr. McIsaac writes in paragraph 22.

A I agree with that.

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<p>1 P. Vinella</p> <p>2 Q Nothing in there that you disagree</p> <p>3 with?</p> <p>4 A No.</p> <p>5 Q Thank you.</p> <p>6 Could you have in front of you your</p> <p>7 report, sir.</p> <p>8 A Okay.</p> <p>9 Q And turn to page six. Do you have</p> <p>10 that, sir?</p> <p>11 A I do.</p> <p>12 Q The last full paragraph on page six</p> <p>13 reads, "While he points to few concrete issues."</p> <p>14 Do you see that?</p> <p>15 A Yes.</p> <p>16 Q You say, "While he," being</p> <p>17 Mr. McIsaac, "points to few concrete issues that</p> <p>18 if substantiated could indeed increase the reserve</p> <p>19 requirement as of September 19, Mr. McIsaac</p> <p>20 discusses many speculative and unsupported issues</p> <p>21 that if accurate could in his opinion materially</p> <p>22 increase the credit component of the reserve</p> <p>23 requirement formula, hence increasing the reserve</p> <p>24 requirement."</p> <p>25 Do you see that?</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 P. Vinella</p> <p>2 A Yes.</p> <p>3 Q Could you categorize for me --</p> <p>4 withdrawn.</p> <p>5 Which of the issues that Mr. McIsaac</p> <p>6 raises fall into your taxonomy of concrete issues</p> <p>7 that if substantiated could increase the reserve</p> <p>8 requirement as of September 19?</p> <p>9 A I would, I would say concrete issues,</p> <p>10 those would be the ones enumerated in his report,</p> <p>11 specifically the FID assets that were allegedly</p> <p>12 seized by Chase.</p> <p>13 I would also look at the account</p> <p>14 coding errors. The LBI assets maintained at LBIE.</p> <p>15 The customer cash claims were the LBI's customer</p> <p>16 who formerly had a claim against LBIE. Excuse me,</p> <p>17 LBI.</p> <p>18 The OCC deposit. The error in the</p> <p>19 Broadridge software.</p> <p>20 Those would be the concrete examples.</p> <p>21 MS. NEUHARDT: That is the 19th. Go</p> <p>22 back and look at the -- the question is</p> <p>23 could you categorize for me --</p> <p>24 MR. OXFORD: Amy, it's fine. The</p> <p>25 witness has the question, has answered the</p> <p>TSG Reporting - Worldwide 877-702-9580</p>
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<p>1 P. Vinella</p> <p>2 question. If you want to conduct direct</p> <p>3 afterwards, you are more than welcome to do</p> <p>4 that, but please object to the form. Thank</p> <p>5 you.</p> <p>6 A And what I was going to actually</p> <p>7 preface it at the end, this will probably help</p> <p>8 you, was the fact that some of these actually were</p> <p>9 not known on the 19th. They may not have occurred</p> <p>10 on the 19th. That's why I said allegedly seized,</p> <p>11 for instance.</p> <p>12 We would have to substantiate as well</p> <p>13 that the dates that -- the dates that these events</p> <p>14 occurred or were known to Lehman Brothers were</p> <p>15 effective as of the 19th as well.</p> <p>16 Q You make a distinction, sir, between</p> <p>17 whether the events were known to Lehman Brothers</p> <p>18 or whether they occurred effective as of the 19th.</p> <p>19 Is there any distinction in your mind, sir --</p> <p>20 withdrawn.</p> <p>21 Any of these errors which Mr. McIsaac</p> <p>22 points out in his affidavit occurred on the 19th</p> <p>23 of September but were not known to LBI until after</p> <p>24 the 19th, in your mind, sir, in your expert</p> <p>25 opinion, sir, were those errors required to be</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 P. Vinella</p> <p>2 corrected in a reserve account calculation that is</p> <p>3 dated as of September 19, 2008?</p> <p>4 A First, and just to make the process</p> <p>5 go faster, you have used the word "errors"</p> <p>6 throughout Mr. McIsaac's report. I don't know</p> <p>7 that they are errors. In some cases it's been, I</p> <p>8 think, fairly clear to me in terms of doing the</p> <p>9 analysis that in fact no error occurred.</p> <p>10 So, I don't want to typify these as</p> <p>11 errors. Rather than say alleged errors every</p> <p>12 time, I'm just going to say errors. That is</p> <p>13 number one.</p> <p>14 Number two, I am not a lawyer and I</p> <p>15 am not a legal expert, but I don't know of any</p> <p>16 requirement that says that a 3-3 calculation has</p> <p>17 to be performed after a SIPA liquidation. SIPA</p> <p>18 liquidation is a different regulatory regime than</p> <p>19 the SEC regime.</p> <p>20 I don't know that there is a</p> <p>21 requirement that if you find an error in December</p> <p>22 around coding, that you have to go back and</p> <p>23 recalculate a 3-3 calculation as of the 19th. I</p> <p>24 am just not an expert on that, so I can't opine.</p> <p>25 Q Okay, thank you.</p> <p>TSG Reporting - Worldwide 877-702-9580</p>

P. Vinella

The second part of this, where you talk about the speculative and unsupported issues that you say, if accurate, could increase the credit component, which items fall into that category, sir?

A I could read them all again. As I mentioned, many of Mr. McIsaac's issues that he brings up in his affidavit, there is nothing to show, one, that the reserve calculation did not correctly account for these, or that these events actually occurred the way that Mr. McIsaac said, or that the amount of money was actually the right amount of money.

In most instances, he doesn't refer to an exhibit or a document or a report that says this is where I have got this information from. It's very difficult for me to go in and say yes, that is correct or not correct.

(Exhibit 598 marked for identification as of this date.)

Q Sir, I have handed you what I have marked as Exhibit 598, which is the brief the SEC filed in the trustee's allocation motion.

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P. Vinella

If you'll take a moment to flip through that and tell me whether you have seen that document before or not.

A No, I don't believe I have seen this document. I may have received it, but I didn't look at it. So this is not familiar to me.

Q You will see, sir, if you turn to the last page, that it's dated December 11, 2009.

Actually the very last page, sir.

A Yes.

Q And that is approximately one month before you completed your report; correct?

A Yes.

Q Do you believe you received it before you completed your report, sir?

A As I said, I may have received it. I can't even attest to that. I am fairly certain that I did not read this.

Q Could you turn to page eight, please, sir.

Do you see there is a paragraph beginning, "Accordingly," about five lines down?

A Yes.

Q It reads: "Accordingly, the

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P. Vinella

Commission had adopted the Customer Protection Rule," and it has a cite to Rule 15c3, "which imposes on firms obligations to protect both customer securities and customer funds. Taken together, the provisions concerning securities and the provisions concerning funds are designed to insure that there will be sufficient assets to meet customer net equity claims upon liquidation."

Do you see that?

A Yes.

Q Do you agree with that, sir, as a c3 expert?

A First of all, I don't know who the Commission is, so I would have to go to the defined terms.

MS. NEUHARDT: It's the SEC.

Are you asking him to interpret the validity of the SEC legal argument?

MR. OXFORD: He's testifying as a c3 expert. I am asking whether he agrees with this or not.

MS. NEUHARDT: I think he said repeatedly that he's an expert side on the operations side of 15c3-3.

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P. Vinella

I object to -- plus what the SEC said in a legal brief to the court is not necessarily what the law is.

I object to this line of questioning.

You are allowed to answer, if you feel you can.

A I don't have -- I am not an expert in this aspect of the -- of the SEC regulations. I can't tell you what applies and what doesn't apply after the fact.

I am assuming this is -- if you are saying after SIPA liquidation -- is that the context that this is put in? Because without reading the entire document, I don't know what context this is in.

Q The question simply is, sir, do you agree with that statement in the SEC brief, particularly the second sentence, where it says that "taken together, the provisions of Rule 15c3 concerning securities and the provisions concerning funds are designed to insure that there will be sufficient assets to meet customer net equity claims upon liquidation"?

MS. NEUHARDT: Are you asking him

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1 P. Vinella
2 about paragraph 11 without reading the
3 entire document?

4 MR. OXFORD: He's welcome to read the
5 entire document.

6 **Q The question is, do you or do you not**
7 **agree with that statement?**

8 A I am going to have to read,
9 unfortunately -- I know we all want to go home,
10 but I can't -- I have no concept of what context
11 it is. Is it referring to broker dealers or other
12 entities that may not be covered by the SEC? Does
13 it happen before or after liquidation?

14 So unless I read the document to be
15 able to put enough context on it, I have no way to
16 give an opinion on it one way or another.

17 **Q Do you agree, sir, that Rule 15c3 is**
18 **intended to insure that fully paid customer**
19 **property and excess margin securities are**
20 **unconditionally available to satisfy customer**
21 **claims in the event of a broker dealer's**
22 **liquidation?**

23 MS. NEUHARDT: I just want a running
24 objection to this line of questioning.

25 A First, the term of art, as I
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1 P. Vinella
2 mentioned, "customer property," as far as I know,
3 is not a concept within the SEC regulatory
4 framework, and specifically 15c3-3, I don't recall
5 that term ever being used. It's usually mostly
6 referred to as customer assets.

7 So there -- I would take objection to
8 that categorization.

9 If you are asking is 15c3 a provision
10 that is intended to protect customer assets, I
11 would agree with that, and if it's the ability of
12 the customer to promptly receive possession of
13 those assets, I would agree with that.

14 **Q Okay. Can you turn to page one of**
15 **the brief. Not the first page, but the page that**
16 **is headed up "Interest of the Commission."**

17 A Could you point out where I am
18 supposed to look?

19 **Q Yes. If you see the second paragraph**
20 **begins, "We urge."**

21 A Yes.

22 **Q Do you see where it reads: "We urge**
23 **here that in the event that there is a shortfall**
24 **in the reserve bank account at the time of the --**
25 **of a brokerage firm's liquidation, the relevant**

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1 **P. Vinella**
2 **statutory and regulatory provisions of SIPA**
3 **require that an amount equal to shortfall be**
4 **allocated to customer property, to be used to**
5 **repay customers for securities and cash entrusted**
6 **to the firm," and it goes on to say, "rather than**
7 **to the general estate that is available to other**
8 **creditors," sir?**

9 A Yes.

10 **Q Are you able to tell me whether or**
11 **not you agree with that statement?**

12 A I am not qualified to provide a
13 statement either way.

14 **Q In your capacity as an expert on c3,**
15 **have you ever heard the 15c3 customer reserve**
16 **funds referred to as margin?**

17 A No.

18 **Q Have you ever heard 15c3 reserve**
19 **funds referred to as guarantee funds?**

20 A I believe I have heard it in the
21 context of 3-3, but it's not -- it's not a common
22 application.

23 **Q Where in the, in the context of c3,**
24 **have you heard reserve funds being referred to as**
25 **guarantee funds, sir?**

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1 **P. Vinella**
2 A I believe it was used by -- in one of
3 the projects someone called it that. I have a
4 recollection of it, and I can't recall exactly
5 when it happened and what client it was, but I
6 believe that the person called it -- it was
7 either -- it may have been called a guarantee
8 account or something like that, as opposed to a
9 reserve account.

10 **Q Other than one occasion when a client**
11 **referred to a guarantee account, sir, can you**
12 **think of any other instance in your experience**
13 **working with Rule 15c3-3, that customer reserve**
14 **funds were ever referred to as guarantee funds or**
15 **guarantee accounts?**

16 A Not that I can recall other than that
17 one instance. I have always referred to it as the
18 reserve account, and in conversations, that is the
19 way we have talked about it.

20 MR. OXFORD: Okay. Now might be a
21 good time for a five-minute break.

22 A Can I qualify that?

23 **Q Of course.**

24 A We also have called them seg account.
25 We've called them customer seg accounts or reserve

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<p style="text-align: right;">Page 230</p> <p>1 P. Vinella 2 accounts, and that is actually quite common we 3 will call them a seg account. 4 MR. OXFORD: If we can take a little 5 over five minutes, I might be able to 6 shorten this a little bit. 7 MS. NEUHARDT: Okay. That would be 8 good. 9 (Recess taken.) 10 BY MR. OXFORD: 11 Q Mr. Vinella, you have in front of you 12 your expert report, please, and turn to page ten. 13 Just after footnote 14, sir, you 14 write, "Moreover, it was able to successfully 15 compute its reserve requirement at least through 16 September 17th." 17 Do you see that? 18 A Yes, I do. 19 Q It meaning LBI the broker dealer; 20 correct? 21 A Yes. 22 Q What is the basis of your opinion 23 that LBI was able to successfully compute its 24 reserve requirement through September 17th? 25 A It was based on interviews with Tony TSG Reporting - Worldwide 877-702-9580</p>	<p style="text-align: right;">Page 231</p> <p>1 P. Vinella 2 Stucchio, Joel Potenciano, Ricky Policke, 3 specifically, who mentioned that they were 4 involved in those computations. 5 I even believe it came up in that 6 initial phone call that had with Bill Burke and 7 Alex Crepeau on the phone as well. 8 And there was a general consensus 9 that they were able to close their books and 10 records, balance each of the nights prior to the 11 19th, and that they were able to calculate a 3-3 12 requirement that was reasonable. 13 They all mentioned that the SEC and 14 FINRA was there, and I am not saying that SEC and 15 FINRA guaranteed that the numbers were right, but 16 they believed, as an operating group, they were 17 under more scrutiny than what they might have 18 normally been. They felt still very comfortable 19 that the numbers they were coming up with were 20 reasonable. 21 Q "Reasonable" means what, sir, 22 reasonably accurate? 23 A Well, you can never be certain that 24 every number that is produced is 100 percent 25 accurate. There is a standard of care that most TSG Reporting - Worldwide 877-702-9580</p>
<p style="text-align: right;">Page 232</p> <p>1 P. Vinella 2 people have, which is reasonability, commercial 3 reasonability, are usually the one that is used; 4 and in this case they felt that, within that 5 standard, those numbers were reasonable, and they 6 felt comfortable taking money out of the reserve 7 account that represented the excess. 8 Q And you had a specific discussion 9 with the individuals you mentioned, Mr. Stucchio 10 and others, about the commercially reasonable 11 standard you have just testified to? 12 A We asked them what, you know, did 13 they think these were reasonable numbers, and did 14 they feel comfortable that the results were right. 15 As they pointed out, the accounts 16 being balanced and the books being balanced at the 17 end of the day, they felt, from an operational 18 point of view -- again, it doesn't mean there are 19 not errors in the operations. It means they have 20 identified the errors and they have correctly 21 accounted for them, either in the suspended 22 accounts, or some other type of area, and that 23 they were able to take the results of the 24 end-of-day operations and feed those into the 3-3 25 calculations, which were produced automatically by TSG Reporting - Worldwide 877-702-9580</p>	<p style="text-align: right;">Page 233</p> <p>1 P. Vinella 2 the systems. When they reviewed them, especially 3 based on the number of customers that were leaving 4 that week, that they expected the reserve 5 requirements to go down substantially, and that 6 the calculations seemed to be within the context 7 of their expectations. 8 Q Did you, sir, undertake any analysis 9 of the September 17th LBI c3 reserve formulation 10 calculation to test whether it was accurate? 11 A What we were hoping to get was 12 operational information that could have done that. 13 We weren't able to get that in the time frame we 14 had, and there were some issues of whether that 15 was even accessible. 16 We also had hoped, and this gets to 17 the other point, of actually getting the results 18 of the Deloitte and Touche analysis, because I 19 understand they had 100 people working over a year 20 to resolve the books and records as of the 19th. 21 So, our hope was, actually, to be able to look at 22 those, and look at the adjustments that would have 23 been made to the reserve calculations, as a result 24 of the operational analysis that they had done. 25 Q So, the answer is, no, you did not TSG Reporting - Worldwide 877-702-9580</p>

1 **P. Vinella**
2 **undertake any analysis of September 17th**
3 **calculations to test whether it was accurate or**
4 **not?**

5 A That is fair.
6 I should also point out that I don't
7 believe Mr. McIssac did either.

8 **Q Did you undertake any analysis of**
9 **LBI's September 19th c3 reserve calculation to**
10 **test whether that was accurate or not?**

11 A We looked at the exhibits that Mr.
12 McIssac included, and in talking to the
13 operational staff, they did not have any -- first
14 of all, they could not close the books on the
15 19th, the 20th, the 21st, as far as we understood.

16 There were a large number of open
17 items that they weren't able to correctly classify
18 and, as a result, it didn't seem reasonable to try
19 to reconstruct the 3-3 calculation as of the 19th.

20 One of the things, again, we were
21 hoping to be able to get was the analysis that
22 Deloitte and Touche had done, and then we would
23 have enough information to be able validate that
24 the 3-3 calculation was done correctly.

25 **Q So, it's your testimony that without**
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1 **P. Vinella**
2 **relying on the work that others have done to**
3 **reconcile the books and records for the 19th of**
4 **September, you wouldn't be able to rerun the c3**
5 **calculation with respect -- from that date; is**
6 **that correct?**

7 A Without either going back and doing
8 all that work ourselves or relying on Deloitte and
9 Touche, I agree with that.

10 And I think this is an important
11 aspect that hasn't really come up clearly, I
12 think, in the discussion.

13 When Mr. McIssac, for instance, says
14 that a customer has been incorrectly coded as a
15 non-customer or vice-versa, that just doesn't
16 automatically push cash balances, for instance,
17 into the credit. There is also debits that may be
18 entailed about failure to deliver securities and
19 the like. So, it's not just, "Here's one item.
20 Let me send to it the reserve account."

21 You have to take that change and
22 apply to it all the buckets of the credits and all
23 the buckets of the debits and then recalculate it,
24 and I think that is one of the things that doesn't
25 come out in Mr. McIssac's report, is that even if
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2 there is a discrepancy, it doesn't necessarily
3 have a one-to-one effect on the reserve
4 calculation, much less the account balance.

5 **Q You identified, sir, the exodus of**
6 **customers in the week of and the weeks prior to**
7 **the SIPA liquidation as an item that would**
8 **increase debits in the reserve formula; correct?**

9 A Well, it wouldn't increase the
10 debits. It would reduce, if you look at the 3-3
11 reserve requirement as a way of protecting
12 customer assets, as customer assets go down
13 substantially, you would expect that reserve
14 requirement to go down proportionately.

15 **Q What other debit items might exist**
16 **that, in your opinion, would decrease the reserve**
17 **requirement?**

18 A Could you say that again?
19 (Record read.)

20 A Again, if you look at the debit
21 items, there are some associated with LBI pledging
22 assets to cover customer margins at futures and
23 options exchanges and clearing houses.

24 I think probably the biggest one in
25 this period of time was a failure to deliver

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1 P. Vinella
2 securities as their clearing bank had problems;
3 that would probably be a substantial one that
4 could increase the debit side of the calculation.

5 I don't -- and then, again, if they
6 are extending customer margins, you know, and
7 things like that, that would be include.

8 **Q Did you undertake any analysis to**
9 **identify these debit items you have just testified**
10 **to?**

11 A We talked to the operations staff.
12 Their belief was that the biggest factor that
13 would dwarf everything else would be the number of
14 assets themselves had just gone down. So, there
15 would be less debit items, there would be less
16 credit items, just primarily because there are
17 less customer assets you would have to worry
18 about. So, there wouldn't be as much margin
19 lending. There probably would be a lot of option
20 activity. They did all agree there would be a
21 significant number of failure to delivers, and
22 probably much less failure to delivers than
23 failure to receives, which would tend to reduce
24 the requirement, but we did not independently
25 validate that.

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Q Why not, sir?

A Again, we didn't have access to the information that would have been necessary to do that and we didn't have the necessary time.

So, if we could have had access to the full books and records of Lehman Brothers, and a reasonable period of time; or if we had access to the results of the Deloitte and Touche analysis, we would be able to do that in a much shorter time frame.

Q Page 11 of your report, sir, you assert that the September 17th calculation was the last clean reserve requirement calculation performed by LBI.

Do you see that?

A I do.

Q What do you mean by that, the "last clean reserve requirement calculation"?

A A term of art in the financial industry, when someone says it's "clean," usually it's based on books and records that were able to be closed, balanced at the end of the day; that a trial balance was able to be run, showing that, you know, assets minus liabilities equal

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shareholder equity type of issues and, therefore, any of the resulting calculations that use that data, such as a 3-3 calculation, would then be considered, within reasonable standards, accurate.

And the 17th was the one we were told, they were the last one they ran prior to trying to run the -- the report as of the 19th.

Q You also testified, sir, that the calculation was -- withdrawn.

You also testified, sir, that the September 17th reserve formula calculation performed by LBI was observed by the SEC and FINRA.

A I believe I said that the FINRA and the SEC representatives were there. I am not saying that they observed the calculations.

In fact, the calculations are produced in an automated report, but that they were present and looking over all the operations.

Q Okay. Can you turn to page 11 of your report, sir?

A Sure.

Q That last paragraph that begins, "the last clean reserve requirement," it says, "the

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last clean reserve requirement calculation performed by LBI as of September 17th and observed by the SEC and FINRA, did, indeed, show a significant drop of approximately \$4 billion."

What did you mean, sir, when you said that the last clean equipment was observed by the SEC and FINRA?

A Again, to me, the calculations are the operations necessary to produce data, and they were observing the operations. They weren't watching someone push a button and a report come out. So, I think it's probably more accurate if I would have added "and the operations were observed by the calculation."

Q What operations did the SEC and FINRA observe?

A My understanding was they were watching settlement clearance activities, they were watching money going in and out of various accounts.

If certain issues came up in the operations area, my understanding was they went directly to the SEC and asked for clarifications on what they had done.

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During the interviews, it became pretty clear that a broker dealer staying in business when the parent had gone bankrupt was a fairly new situation for the regulators, as well as for people working at LBI. So, there was a very cooperative environment in terms of making sure that they were able to maintain integrity as an operation, maintain regulatory compliance and still have to do things in a slightly different, in some cases a very different, way than they had done it the previous week.

Q Who were the individuals, sir, who gave you this information about the SEC observing the LBI operations in the week leading up to the filing on the 19th?

A I believe that came up in every single interview that we had. I can't think of a single time that that didn't come up. Part of that could have been because, once we heard it, we asked: Were you aware that the SEC was there and FINRA was there, and what role they played. But I do believe it came up in every interview.

Q Can you turn to page 12, footnote 25, sir?

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<p>1 P. Vinella</p> <p>2 A Page 12?</p> <p>3 Q Page 12, footnote 25.</p> <p>4 A Okay.</p> <p>5 Q You again say, with respect to the</p> <p>6 calculations of the reserve formula during the</p> <p>7 week of the 15th, that these calculations and</p> <p>8 subsequent withdrawals were observed closely by</p> <p>9 the SEC and FINRA.</p> <p>10 Do you see that?</p> <p>11 A Yeah, I do.</p> <p>12 Q What do you mean by that?</p> <p>13 A We were told in interviews with Paolo</p> <p>14 Tonucci, as well as Tony Stucchio, that they</p> <p>15 informed the SEC and FINRA that they were going to</p> <p>16 do daily calculations of the reserve requirement.</p> <p>17 There was a general consensus this requirement</p> <p>18 will go down again because of the number of assets</p> <p>19 that were leaving, and that they would show the</p> <p>20 results of the calculations to the SEC and FINRA</p> <p>21 before they withdrew money from the reserve</p> <p>22 account.</p> <p>23 Q And who told that you they showed the</p> <p>24 results of the reserve calculation before</p> <p>25 withdrawing money to the SEC and FINRA?</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 P. Vinella</p> <p>2 A Again, that was Paolo Tonucci, the</p> <p>3 treasurer, and Tony Stucchio.</p> <p>4 Q They, personally, showed the results</p> <p>5 of that formula to the SEC and FINRA?</p> <p>6 A I don't know that they, personally,</p> <p>7 showed it. They stated that the results were</p> <p>8 shown to the SEC and FINRA representatives, and</p> <p>9 before they would go ahead and take money out the</p> <p>10 reserve account.</p> <p>11 Q So, I am clear, the basis of your</p> <p>12 testimony is, sir, is that someone told</p> <p>13 Mr. Tonucci or Mr. Stucchio that someone had shown</p> <p>14 the SEC or FINRA a reserve calculation, and that</p> <p>15 someone at the SEC and FINRA approved the release</p> <p>16 of monies from the c3 account?</p> <p>17 MS. NEUFELDT: Objection.</p> <p>18 Q Is that your testimony, sir?</p> <p>19 A First of all, I mentioned there was</p> <p>20 an approval process, whether that was a formal</p> <p>21 approval process or whether that was somewhat of a</p> <p>22 group of people that would get together before</p> <p>23 they do the withdrawal.</p> <p>24 Q That is the internal process, sir.</p> <p>25 I'm asking about the SEC and the FINRA approval.</p> <p>TSG Reporting - Worldwide 877-702-9580</p>
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<p>1 P. Vinella</p> <p>2 A You asked a question. If I could</p> <p>3 answer that question --</p> <p>4 Q I would like to you answer that</p> <p>5 question.</p> <p>6 A Are you withdrawing the first</p> <p>7 question?</p> <p>8 Q No. I would like you to answer the</p> <p>9 question I asked, not the question you would like</p> <p>10 to.</p> <p>11 A I think I did answer it.</p> <p>12 MR. OXFORD: Can you read it back</p> <p>13 please?</p> <p>14 (Record read.)</p> <p>15 MS. NEUFELDT: Same objection to</p> <p>16 form.</p> <p>17 A And as I was stating there, I did not</p> <p>18 say that someone told Mr. Stucchio or someone told</p> <p>19 Mr. Tonucci that they had shown anything to the</p> <p>20 SEC or FINRA.</p> <p>21 What I said was I don't know if those</p> <p>22 individuals talked to the SEC and FINRA</p> <p>23 representatives directly or not; that there was an</p> <p>24 internal approval process to have this removed.</p> <p>25 Mr. Tonucci may have been there directly talking</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 P. Vinella</p> <p>2 to the SEC representatives. I don't know.</p> <p>3 I do know that before, according to</p> <p>4 Mr. Tonucci and Mr. Stucchio, that before money</p> <p>5 was withdrawn from those accounts, and those would</p> <p>6 have been withdrawn by the treasury area, that</p> <p>7 someone had shown these to the SEC.</p> <p>8 Now, I am also not saying that the</p> <p>9 SEC or FINRA approved. I'm not saying that they</p> <p>10 had to say, "yes, you can do it" or "don't do it."</p> <p>11 That was not discussed as an issue.</p> <p>12 Q You didn't ask Mr. Tonucci or</p> <p>13 Mr. Stucchio whether or not the SEC or FINRA</p> <p>14 approved these withdrawals?</p> <p>15 A We asked them did they believe the</p> <p>16 SEC and FINRA had to approve the withdrawals,</p> <p>17 because it's not in the statute or the</p> <p>18 regulations, themselves; and their response was,</p> <p>19 at that point, they were overly cautious with</p> <p>20 everything they did that was regulatory and they</p> <p>21 showed them.</p> <p>22 So, I think their belief was that</p> <p>23 showing it to them was prudent. I am not saying</p> <p>24 that they had to get an approval or not get an</p> <p>25 approval. I don't know the answer to that.</p> <p>TSG Reporting - Worldwide 877-702-9580</p>

1 P. Vinella
2 **Q And you don't know who at Lehman**
3 **showed any reserve calculation or the basis for**
4 **that calculation during the week of the**
5 **September 15th, 2008, to the SEC and FINRA staff;**
6 **is that correct?**

7 A Well, one of the unfortunate aspects
8 of our analysis was that Bill Burke, who we had
9 initially had access to and was responsible for
10 this area, we didn't have access to interview him
11 afterwards; and it appeared, through discussions,
12 that he actually may have been the person who
13 would have done that. I don't want to say he was
14 or wasn't because we didn't have a chance to
15 validate that.

16 **Q But nobody you talked to actually**
17 **spoke directly the SEC?**

18 A No. Tony Stucchio and Paolo Tonucci
19 were speaking directly to the SEC. I don't know
20 that they said, "Here is the report. What do you
21 think?" I know they were taking to them about
22 moving funds understand out the reserve account.

23 **Q What did they tell you about their**
24 **discussions with the SEC about moving funds out**
25 **the reserve account?**

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1 **P. Vinella**
2 A Exactly what I mentioned, that said
3 they showed it to the representatives of the SEC
4 and FINRA.

5 **Q Who is "they"?**

6 A Lehman Brothers, LBI.

7 **Q Some unknown person at Lehman?**
8 MS. NEUFELDT: Objection.

9 A Again, Lehman Brothers
10 representatives, we don't know who, exactly, it
11 was. We had some belief it might have been Bill
12 Burke. We know that Mr. Tonucci spoke directly to
13 the head SEC regulator. They talked about the
14 reserve calculations, they talked about moving
15 money out of the reserve calculations.

16 Your question was specifically who
17 showed them the report. I don't know who showed
18 them the exact report.

19 **Q Did ask you Mr. Tonucci who showed**
20 **anyone at the SEC any report of the c3**
21 **calculations during the week of September 15th?**

22 A He just mentioned that they had --
23 that the SEC was aware of these reports and was
24 aware of the withdrawals. So, I don't know who.

25 **Q My question is a little different.**

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1 **P. Vinella**
2 **Did you ask Mr. Tonucci who showed,**
3 **the SEC or FINRA, any of these reports that were**
4 **supposedly shown to them during the week of the**
5 **15th?**

6 A I don't think that we asked that
7 specific question.

8 **Q Did you ask Mr. Tonucci, Mr. Stucchio**
9 **or --**

10 A If I can point out one thing. I
11 don't think that that is relevant to this report.
12 We are not stating that the SEC approved it. We
13 are not stating that the SEC said it was correct.
14 All we are saying is that these gentlemen believed
15 that they had enough comfort, because the SEC was
16 observing what they were doing on an operational
17 point of view, and they observed the withdrawals
18 of those accounts. So, it's not like we weren't
19 doing our job. For the report that we were
20 writing, it didn't seem to be that we were being
21 asked to go into what was the withdrawal process
22 and was it done correctly.

23 **Q You understand the reason I am asking**
24 **these questions is because you made these**
25 **statements in your report. They are not in Mr.**

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1 **P. Vinella**
2 **McIssac's report?**

3 A I didn't say in my report that the
4 SEC approved it, I didn't say that Mr. Tonucci
5 provided information to the SEC, I didn't say the
6 SEC got any specific information.

7 I said the SEC and FINRA we
8 observing, and as I corrected myself, the
9 operations.

10 **Q And in your expert opinion, sir, does**
11 **the SEC typically approve 15c3 reserve**
12 **calculations?**

13 A Typically, no.

14 **Q In your experience, would the SEC**
15 **approve a reserve calculation in the circumstances**
16 **such as that in which LBI found itself in in the**
17 **week of September 15th, 2008?**

18 MS. NEUFELDT: Objection.

19 A I have no --

20 MS. NEUFELDT: You can answer.

21 A I have no way of saying that, because
22 this is a fairly rare occurrence, and I don't know
23 what the SEC or FINRA decided to do in this
24 specific case.

25 **Q Okay. In your expert opinion, sir,**

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does FINRA typically approve 15c3 reserve calculations?

A No.

Can I amend that? Those calculations are included in their monthly focus reports, and in that case you have to file those with the -- the SEC. There is an issue there, but the weekly -- the weekly 3-3 calculations by itself, I don't know that they approve those or the SEC approves those.

Q Sir, did you ask Mr. Tonucci and Mr. Stucchio, or any of the others with whom you discussed the SEC's observation of the operations in Lehman in the week of September 15th, whether or not any of the errors, you might say alleged errors, that are contained in Mr. McIssac's affidavit were brought to the attention of the SEC?

MS. NEUFELDT: Objection to form.

A In many cases, the issues raised by Mr. McIssac weren't known prior to the 19th, and the ones that were known as of the 19th, my understanding is that Lehman's operations didn't really have an end of business day, somewhere in

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the late morning.

So, when we discussed with Mr. Stucchio, not Mr. Tonucci, was he aware of any of these errors, such as Woodlands Bank and the like, many of them, he said, they didn't come up during that week, they came up subsequently.

So, they would not have had discussions with the SEC about that.

Q Okay. Is the same answer also true of FINRA for the same reason?

A I would believe so, yes.

Q Page 12, footnote 23 of your report, sir, you write, "the maximum reserve requirement is calculated based on the amount of customer assets held at the broker dealer."

Do you see that?

A Yes.

Q Is that a complete statement about how the maximum reserve requirement is calculated?

A Well, it might have been better worded to say is -- is -- I am trying to think of the exact word I would use there.

I wouldn't say it's calculated based on. I would say that the amount is highly

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associated with the amount of customer assets.

Q Right.
Isn't the amount of the reserve requirement also highly associated with the debits that are in the reserve formula?

A Both the credits and the debits.

Q Right. But you only talk about assets here, sir.

A Assets aren't credits.

What this was intending to say was that the maximum value that the reserve can have would be the total amount of cash the customers have at a broker dealer, plus the total number of securities. So, the total number of customer assets.

So, you assume every asset is kept in a bad control location, for instance; and that there is no margin. There is a maximum reserve requirement, which is actually that number.

So, it shouldn't be really calculated based on, it should be the maximum reserve requirement in the sense is a total number of customer assets. It would be reduced by assets being kept in good control locations, which would

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reduce the credit side. It would also be reduced by margin, which would increase the debit side.

So, if you looked at what's the total number that the reserve requirement could be, if you only had \$5 billion of customer assets the reserve requirement could never be higher than \$5 billion.

Q I understand.

You go on in your footnote to say, "as such as billions of dollars of assets left LBI, one would expect a significant drop in the reserve requirement."

Correct?

A Yes.

Q Would you agree that the customer account leaving LBI would not necessarily reduce the reserve requirement?

A It's possible to have an account that has absolutely nothing in it and, therefore, when an account left, it would have no effect, right.

Q Is it possible you could have a customer account that has an excess of debit over credits?

A You could.

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Q And if that account left, what effect would that have on the reserve requirements or would that accounts increase or decrease the reserve requirements?

A It would increase it; it would reduce the debits.

Q So it's not necessarily an automatic assumption that if an account leaves a broker dealer, the reserve requirement goes down?

A Typically, though, accounts don't have net customer assets. That would be a very rare situation. Most of them have positive assets, because if you leave their margin requirements, their margin requirements have to stay at the broker dealer in order not to be added as a credit, again, to the reserve requirement or removed from a debit item; and, you know, most of them have a certain amount of cash that is kept there.

So, it would be rare to have large numbers of clients that had more debits than credits.

Q You say --

A If I could also point out, in Mr.
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McIssac's report he shows that the average reserve requirement, prior to the week of the 19th, was relatively large; that is because most customer have more credits than debits.

Q You say, on page 12, sir, that "tens of thousands of customer accounts were transferred from LBI to other broker dealers in the weeks prior to the SIPA liquidation, including some of the PAM accounts."

A That's what we were told, yes.

Q Who told you that?

A That was -- Mr. Stucchio mentioned that he believed the PAM accounts started leaving on the Wednesday prior to, I think that would have been the 17th.

Q Have you seen any evidence of this, sir, other than a telephone conversation with Mr. Stucchio?

A No.

Q Do you know how many PAM accounts of the tens of thousands -- withdrawn.

Do you know how many PAM accounts Mr. Stucchio believes left in the week or weeks prior to September 19?

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A I believe that in terms of PAM accounts specifically, they started, was his term, on the 17th if 18th; or maybe the transfers were put in on the 17th and effective the 18th. But he didn't go into, whether it was 20 percent or 80 percent. He didn't mention any numbers of that.

Q And you haven't seen any documents that support your opinion that tens of thousands of customer accounts were transferred from LBI to other broker dealers in the weeks prior to the SIPA liquidation?

A They weren't just PAM accounts. We were told --

Q I didn't ask about PAM accounts. I asked generally whether or not you had seen any evidence of whether or not tens of thousands of customer accounts were transferred to other broker dealers in the week prior to the SIPA liquidation.

A I understand. I was prefacing it by saying, aside from the PAM accounts, we heard that a large number of prime broker accounts had left. We heard that from Ricky Policke, specifically.

And that that actually had started

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several weeks before the collapse of the holding company and LBIE. At that period of time, Lehman's stock was getting beaten up pretty badly, so most of the senior institutional investors, especially the ones that were on Lehman as a credit provider, were leaving.

They also had a large number of institutional clients that were leaving that week after LBI went.

So, we were told that, both by Mr. Roden and Mr. Policke, from an operations point of view, that week there was lots, and they use the word mass exodus, tens of thousands of accounts that had left, or taken most of their assets out. And we also heard from Mr. Stucchio, specifically, about the PAM.

Q My question was whether or not you had seen any documentary evidence of the number of accounts that you say left --

A No.

Q -- LBI --

A No.

Q -- in the weeks prior to the SIPA liquidation?

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MS. NEUFELDT: Let him finish his question.

If you have finished your question now, you can answer.

A Excuse me for interrupting.

No, we did not see any documented evidence.

BY MR. OXFORD:

Q Is it your opinion, sir, that the customer accounts that left LBI in the weeks prior to the SIPA liquidation, or at least through the 17th, were taken account of in the September 17th calculation, the one that you referred to as the last clean calculation that was observed by the SEC and FINRA?

A Could you repeat the question? I'm sorry.

(Record read.)

MS. NEUFELDT: Objection to form.

A That is what we were told.

Q And that's what you meant when you wrote in your report at page five, sir, that the September 16th and September 17th calculations more accurately reflected the declining customer

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base; correct?

MS. NEUFELDT: Objection. He's testified extensively to the numerous aspects of what he meant by that.

Q Can you answer the question, sir?

A What I meant was that they believe that they are accurate, and that the books and records accurately reflected the customer assets. So, yes.

Q Do you have any opinion, sir, on whether the September 19th calculation run by LBI did not also take account of the declining customer base in the weeks leading up to and including September 17th, 2008?

A Again, since I was told that the -- they were not able to close their books as of the 19th, I can't say what was included or wasn't include.

Q You think those accounts might have been added back in, the ones that were taken out on the 17th that you think were accurately reflected?

MS. NEUFELDT: First, you need to let him finish.

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A I think I answered the question.

MS. NEUFELDT: Then I object to the form.

MR. OXFORD: How about we all let me finish, and then maybe we can have a record that at least someone will understand at the end of this.

Q Do you have any basis to believe, sir, that the accounts that left LBI, prior to the 17th of September, 2008, that you believe were reflected in the September 17th calculation, were somehow not accounted for in the September 19th calculation done by LBI?

A That sounded like a double negative question, so, I am just -- could you just read it back to me so I make sure I be precise?

(Record read.)

A I have no evidence that accounts either were entered or taken out incorrectly on the 19th. But, again, because the books and records weren't closed correctly, I can't make an opinion of what happened.

Q Okay. Let me ask it this way.

Looking at what you see on page one,

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you see, "third, Mr. McIssac does not include in his affidavit any analysis of the impact of customer accounts, numbering in the tens of thousands, that were transferred from LBI to other broker dealers in the weeks prior to the SIPA liquidation."

A Yes.

Q I think your testimony is that the exodus of accounts, prior to the 17th of September, was included in the reserve formula calculation; correct?

A I believe so.

Q So, is it your testimony that Mr. McIssac didn't take account of the exodus on the 18th and the 19th?

A I believe that is true.

Q Do you believe that Mr. McIssac's affidavit doesn't also take account of the exodus from the 17th prior?

A Again, his focus is a calculation as of the 19th. He doesn't talk about calculations prior to the 19th. So, I don't know what his analysis would be on the impact of customers leaving before that.

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P. Vinella

Q What's the purpose, sir, of broker dealers keeping a cushion in their reserve formula calculations under c3?

A Generally, to stay out of trouble with the regulators.

Q How does a cushion help them stay out of trouble with the regulators?

A Violating the 15c3-3 reserve requirement is a major violation, according to the SEC. It's also incredibly embarrassing to have to go to the SEC to say, "by the way, we have used customer assets."

So, just to avoid that, they usually put a relatively large cushion in the account, so that if there are discrepancies that are found, which they are still responsible for going back to the SEC to report, they can still say, "oh, by the way, we were still in compliance with minimum requirement."

Q Do you remember what the cushion was in LBI's September 17th c3 calculation?

A I can look it up.

Q If you want to, perhaps, look at Exhibit F to your report, sir.

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A I believe it was 25 odd million dollars, almost \$26 million.

Q Where are you reading from, sir?

A I am reading from page four -- it would be 49, at the bottom of the page, there is a spreadsheet. There is a number that is called cushion.

Q Um-hum.

A And this is in thousands of dollars. So, it's \$25,880,000.

Now, I should point out that Lehman Brothers also kept excess money in the account itself. So, this is a cushion that they added to the calculation, but they also would maintain excess balances in the account. So, this would be the minimum amount of excess that they would have. They could have had more.

Q Okay. Would this, leaving aside any excess in the account, itself, would the cushion that you have referred into the formula in Exhibit F, of approximately \$25 million --

A Yes.

Q -- that wouldn't be sufficient to cover an adjustment, an increase to the formula of
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more than \$25 million, would it?

A Barring any other excess in the account, you are right, yes.

Q Okay. Can turn to page 17 of your report, please.

Do you have it there?

A Yes, I do.

Q When you say, "Mr. McIssac also claims that other errors detected in LBI's service providers allocation program used in the calculation of the reserve requirement caused additional shortfalls in the reserve amount."

Do you see that?

A Yes.

Q You go on to say that "Mr. McIssac provides a single memorandum of support for this assertion, a December 30 memorandum from LBI to Boradridge, LBI's ADP outsource provider, which discusses an alleged error condition regarding he alleged duplicate allocation of, quote, street side positions."

Do you see that?

A Yes.

Q Did you ask Barclays what their

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position was on -- on the account coding errors identified by Mr. McIssac here?

MS. NEUFELDT: Objection. You should only respond to that to the extent that it had bearing on the final conclusions reached in your report.

A First of all, again, I wouldn't typify this is as an account coding error. This was a software error, that the software wasn't correctly doing what it was intended to do.

We had discussions with various people on the Lehman Brothers side, who are now with Barclays, and none of them are familiar with the details of this.

Q Did ask you anybody who is on Barclays' side --

A Not that --

Q -- whether they were familiar with this or not?

Are you aware, sir, that it was Barclays, not LBI, who identified the errors discussed by Mr. McIssac in the Broadridge memo?

MS. NEUFELDT: You have two questions pending. Which one do you want him to

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1 P. Vinella
2 answer?
3 MR. OXFORD: The second one.
4 Can you read it back?
5 (Record read.)
6 A I'm aware from reading the memo that
7 Barclays was aware of the error. I don't know if
8 Lehman Brothers also wasn't aware of the error or
9 that wasn't a Lehman Brothers employee that then
10 became a Barclays employee.
11 Q Are you aware, sir, that it was
12 Barclays rather than Lehman, and by which I mean
13 any employee of Barclays, who identified the \$213
14 million of coding errors that is referenced in Mr.
15 McIssac's report?
16 MS. NEUFELDT: Objection to form.
17 A I couldn't find a reference to the
18 \$213 million in the exhibit. So, that I can't
19 speak to.
20 Q Okay. Leaving a side the computation
21 of the adjustment for one second, were you aware,
22 sir, that it was Barclays, rather than Lehman, who
23 identified the errors that Mr. McIssac say result
24 in a \$213 million adjustment?
25 A If you are saying did the memo come
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1 P. Vinella
2 made the mistake is that Kendall, whose name came
3 up several times, that we were not able to talk
4 to, I understand that he was an LBI employee. So
5 that is my mistake for reading the name and not
6 necessarily the company's name.
7 Q But so you never talked to
8 Mr. McLaughlin; correct?
9 A No. We were never able to arrange a
10 call.
11 Q Did you talk to Daniram Sudarsan?
12 A No.
13 Q Why not?
14 A Again, we had very limited time
15 trying to find people and get the interview set
16 up. It was Christmastime. We were able to see
17 the people we were able to see.
18 I don't mean to it say it in any kind
19 of flippant way, but trying to arrange 15 to 20
20 interviews over the Christmas vacation, it was
21 difficult.
22 Q Are you aware, sir, that Barclays
23 drafted a new c3 reserve calculation as of
24 September 19th that corrects the errors discussed
25 in the Broadridge memo, Exhibit 28 to Mr.
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1 P. Vinella
2 from Barclay to Broadridge, that memo, yes.
3 Q But you write Mr. McIssac provides a
4 memorandum from LBI to Broadridge. You don't say
5 that it's from Barclays to Broadridge.
6 A Then I stand corrected.
7 Q So, if you wanted to amend your
8 report --
9 A I would be happy to do that.
10 Q And the amendment would be that you
11 would say that Exhibit 28 to Mr. McIssac's
12 affidavit is from Barclays?
13 A Right.
14 Q Not from LBI; correct?
15 A If you read it, it does state it is
16 from Barclays.
17 Q Do you have Exhibit 28 in front of
18 you, sir. It's exhibit 28 to Mr. McIssac's
19 affidavit.
20 A Okay.
21 Q Do you have it in front of you, sir?
22 A I do.
23 Q Do you see that it reads that it's
24 Barclays Capital to Broadridge; correct?
25 A Right. and the reason I think that I
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1 P. Vinella
2 McIssac's affidavit?
3 A Are you saying that they did a 3-3
4 calculation for Barclays Capital, the broker
5 dealer?
6 Q No. I am saying they did a 3-3
7 calculation for LBI, the broker dealer, with
8 effect from 9/19, that take account of the errors
9 discussed in Barclays memo to Broadridge, which is
10 Exhibit 28 to the Mr. McIssac affidavit?
11 A I am not aware of any such
12 calculation.
13 Q No one showed you that?
14 A No.
15 Q Could we mark this as our next one.
16 (Exhibit 599 marked for
17 identification as of this date.)
18 BY MR. OXFORD:
19 Q Sir, I have handed you what I have
20 marked as Exhibit 599.
21 It's a e-mail from Bill Burke, from
22 Barclays Capital, on Friday the 9th of January at
23 4:15 p.m.
24 If you would take a look at the
25 e-mail, it has a spreadsheet attached to it. Tell
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me whether or not you have seen this document before.

A No. I have not seen this document.

Q Barclays didn't provide this to you?

MS. NEUFELDT: This is dated after his report.

A My report was the 10th.

MR. OXFORD: It's 364 days.

A No. We did not get this.

Q Do you think that is the sort of document that would have been important to see before your report, sir?

A Obviously, the more information you have, the more complete you could always be. So, I can't say, just glancing at it, that this is something that either substantiates or refutes anything in Mr. McIssac's report; but, obviously, getting something is always good.

Q Did anybody, of the dozen or so people that you interviewed, tell you that Barclays was rerunning LBI's calculation with effect from 9/19?

A To my knowledge, Barclays was not doing that. My understanding that they were

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Barclays people that were either part of the TSA or they were helping the TSA. Some were ring fenced and some weren't.

So, no one told me that Barclays was independently calculating these as well.

Q Did you ask that question of anybody you met, sir?

A No.

Q You see that just below the initial e-mail, there is an e-mail, it's sent from Daniram Sudarsan to Kendall McLaughlin and others including Mr. Potenciano --

A Yes.

Q -- on Thursday, January 8th.

Do you see that?

A Yes.

Q And the subject is revised LBI reserve formula, September 19th, 2008.

You spoke with Mr. Potenciano, didn't you?

A We did.

Q Did you -- Mr. Potenciano didn't tell you that Barclays was recalculating LBI's reserve formula as of September 19, 2008, did he?

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A Well, as a matter of course, we didn't ask a lot of questions about what happened post the 19th. In some cases, it was specifically because we believed that they either were part of the TSA effort, or had knowledge of what the TSA was doing, and we were told that that was an area that we were not allowed to look into. Specifically, it came up around Bill Burke and then got extended to other people.

Q Was Mr. Potenciano included within that crowd of people that was employed under the TSA?

A I don't think he was one of the ring fenced, but I think he actually had done some work with the TSA shortly after LBI collapsed.

And so, again, just on a matter of caution, we specifically did not ask questions about those periods of time.

Q But you did talk to Mr. Potenciano about the Broadridge memo?

A I don't think we did talk to him about the account issue, the coding issue.

Q You see that the e-mail says -- it's addressed to "Kendall, we had a meeting where Sal

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and myself discussed with Bill and Joe the revised reserve formula as of 9/19/08, based on the revised allocation reports produced by Broadridge."

Do you see that?

A Yes, I do.

Q It says, "the net effect was that the reserve requirement increased by 213 million."

Do you see that?

A I do.

Q Does that change your opinion as to whether or not the errors reflected in the Barclays Capital memo to Broadridge of December 30th, 2008, in Exhibit 28 to the McIssac affidavit would have correctly increased the reserve requirement for LBI as of 9/19/08 by 213 million?

MS. NEUFELDT: You should take your time to review the entire exhibit.

A Well, what I would say is I understand now where the \$213 million comes from, but I have no way on determine, without even looking at more information than is specifically here, that that number was corrected, unless they

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1 P. Vinella
2 actually had the reports from Broadridge attached
3 to this. Here is the allocation.
4 And, so even if all the information
5 is here, it's something I wouldn't be able to just
6 look at and say, "Well, that's it." It would take
7 some analysis and some time.
8 And as I mentioned in my report, I am
9 happy to, as more information is made available,
10 revise my report based on the information that was
11 made available.
12 **Q Did anyone tell you, sir, that the**
13 **\$82 million of customer assets that were seized by**
14 **Citibank was accounted for in the PIM settlement**
15 **that Barclays was a party to in December of 2008?**
16 A No.
17 **Q Do you agree, sir, that LBI's**
18 **9/19 calculation of the c3 reserve requirement**
19 **included a debit of \$507 million for customer**
20 **margin of the OCC?**
21 A I believe that was included as a
22 debit item.
23 **Q And do you also agree that without**
24 **this debit item, the lockup requirement from**
25 **9/19 would increase?**
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1 **P. Vinella**
2 A If you took it out, it would
3 increase.
4 **Q And the lockup amount would include**
5 **if you took that debit out, actually, by**
6 **\$507 million; correct?**
7 A The requirement, yes, the minimum
8 requirement would go up, not necessarily the
9 lockup requirement because that adds the cushion.
10 **Q But the requirement, itself?**
11 A The requirement, itself, yes.
12 **Q And if there was a deficiency in the**
13 **15c3 lockup, not just the requirement but the**
14 **actual lockup as against the requirement, removing**
15 **this debit would increase that deficiency further,**
16 **would you agree with that?**
17 A If there was a reason to remove it,
18 yes.
19 **Q And, in fact, again, it would**
20 **increase that deficiency further by \$507 million;**
21 **correct?**
22 A I don't necessarily like the word
23 "deficiency," because if there was an excess of a
24 billion dollars, there isn't a deficiency. That
25 is the --
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1 P. Vinella
2 **Q Well, let's define our terms here,**
3 **sir.**
4 **If there is a requirement of**
5 **\$2 billion, and there is a lockup of a billion**
6 **dollars, would you agree there is a deficiency of**
7 **a billion dollars?**
8 A If there was a \$3 billion balance in
9 the account, no.
10 **Q But I have told you there is a \$1**
11 **billion.**
12 A You said there was a lockup. I
13 misunderstood what you were saying by lockup.
14 **Q Let's try this again.**
15 **If you assume that there was a**
16 **1 billion, one billion dollars locked up in the**
17 **reserve account for a broker dealer, and the**
18 **reserve requirement under 15c3 was \$2 billion,**
19 **would you agree with me, under that scenario, sir,**
20 **there would be a deficiency in the lockup under c3**
21 **of \$1 billion?**
22 A Yes.
23 **Q And if one were to remove a debit**
24 **item, such as the 507 million for customer margin**
25 **with the OCC, that would decrease the deficiency**
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1 **P. Vinella**
2 **further?**
3 A Yes.
4 **Q And it would increase the deficiency**
5 **further by 507 million?**
6 A In this case, yes.
7 **Q As an expert in 15c3, sir, do you a**
8 **agree that if there was a business deal to**
9 **transfer to Barclays property that counted towards**
10 **a customer reserve requirement, that is something**
11 **that ought to have been disclosed to interested**
12 **parties, such as the bankruptcy court?**
13 A I am not a bankruptcy expert, so I
14 can't say what is appropriate to disclose or not
15 disclose.
16 **Q Okay. As an expert in 15c3, sir, do**
17 **you agree if there was a business deal to sell to**
18 **Barclays property that counted toward the customer**
19 **reserve requirement, that is something that the**
20 **SEC would be interested in knowing?**
21 MS. NEUFELDT: Objection to form.
22 What date are you talking about?
23 And objecting to is this something
24 the SEC would be interested in knowing. I
25 mean that is -- you are asking him to get
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1 P. Vinella
2 into the mind of the SEC. It's a very
3 objectionable question.
4 BY MR. OXFORD:
5 Q Okay. Sir, as an expert in c3, which
6 is an SEC regulation, correct?
7 A Yes.
8 Q As an answer expert in one of the
9 SEC's regulations, if there was an agreement to
10 sell from Lehman to Barclays property that counted
11 towards the customer reserve requirement, and if
12 it were removed from the calculation it would
13 increase that reserve requirement, do you believe
14 that is something the SEC would be interested in
15 knowing?
16 MS. NEUFELDT: Same objections.
17 A Not before the fact.
18 Once there was an agreement, I could
19 see an issue; but prior to an actual agreement
20 being executed, and then the actual balance being
21 withdrawn, I don't believe that that would be part
22 of the calculation.
23 If they agree to leave it in there
24 for a year, why would I go back and change the
25 reserve requirements? I think the timing is --
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1 P. Vinella
2 requirement to go to them until you actually know
3 that you are in violation.
4 MR. OXFORD: I have got a few
5 questions on your notes, but it might be
6 easier, if we take a break for five minutes
7 and see if I can shorten it.
8 (Recess taken.)
9 MR. OXFORD: Back on the record.
10 Q Mr. Vinella --
11 MS. SCOFIELD: Actually, I believe he
12 would like to clarify his last answer.
13 A Is it possible?
14 Q Sure.
15 A When we were discussing whether there
16 was a -- the \$503 million that was at the OCC, and
17 what would be the responsibility of Lehman
18 Brothers in that case to adjust the 33
19 calculation, I just think it's important to state
20 that, one, when they run a 3-3 calculation, it's
21 as of a date, and until something materiality
22 changes -- let me put it --
23 You run your report. If you find
24 that there is an error after the fact, you have to
25 report there was an error, and you may be asked to
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1 P. Vinella
2 Q If they agreed to leave it in there
3 for a period of less than a year or withdraw the
4 property immediately, and that counted towards the
5 customer reserve requirement, do you think that is
6 something that the SEC ought to have been advised
7 of?
8 MS. NEUFELDT: Same objection.
9 A If you are saying would you run
10 another 3-3 calculation, that is something that is
11 different than advising the SEC.
12 So, it's a strange hypothetical.
13 I mean, if you are saying that you
14 are already in deficit, the SEC is already going
15 to know everything you are doing, and you are
16 already going to be there.
17 If this would cause to you go into
18 deficit, my belief is that, normally, the
19 operations and compliance people would go to
20 business people and, say, listen, you are going to
21 have to replace this so we are not in violation.
22 The idea is to avoid that from happening.
23 If it they did go into a deficit,
24 then at that point, yes, you have to go to the SEC
25 and advise them. I don't know that there is a
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1 P. Vinella
2 recalculate the 3-3 calculation.
3 If another event happens in between
4 your normal reporting period, there is no
5 requirement that you have to actually run another
6 report.
7 Most firms would run another report
8 if they believed that there was a substantial
9 event that they knew that could impact the
10 requirement, such as, okay, we are going to take
11 this \$503 million out. We know that that is a
12 debit item. That may significantly change our
13 requirements, but they would run a whole new
14 calculation. They wouldn't just sit and adjust
15 one debit item, they would go and say, "Well,
16 other changes to debits and credits happened."
17 And then they would make a deposit, if they had to
18 in addition to the lockup; or they might have an
19 excess already in place, and they wouldn't have to
20 make a deposit.
21 I didn't want to you give you the
22 feeling that if there was something that they knew
23 would materially change it, they wouldn't
24 necessarily act on it, but they would run a whole
25 new calculation to see exactly what the situation
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1 P. Vinella
2 was. If they did find a mistake, as I mentioned,
3 they would go backwards in time and make an
4 adjustment if necessary. This was not a mistake.

5 Again, the key element is you do you
6 the whole calculation, all the credits, all the
7 debit and see what the impact would be as of that
8 date.

9 BY MR. OXFORD:

10 Q You have in front of you 592, sir?

11 A Okay.

12 Q Can you tell me what these are,
13 please, sir.

14 A These are redacted copies of notes
15 that I, or other members of the LECG team, took
16 during the interviews on the 18th, as well as, I
17 believe, some of the phone interviews, and the
18 areas that were not redacted are ones that we
19 relied on in producing the report or I relied on
20 in producing the report.

21 Q Looking at Exhibit 592, sir --

22 A Yes.

23 Q -- are you able to tell whether these
24 are notes of the meetings in New York on
25 December 18?

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1 P. Vinella

2 A These are meetings of the 18th, yes.

3 Q Do you know who took these notes?

4 A These ones, I believe, were prepared
5 by Andrea Calderoni.

6 Q Can you turn your attention to the
7 penultimate page, please?

8 A It's good I took all that Latin.

9 Q It's okay. You have reached my
10 quota.

11 A You are already over it now.

12 Q My quota has gone up to three.

13 Do you see on the last line it says,
14 "the overdraft was notified, in res calc was done
15 as of Thursday."

16 Do you see that?

17 A Yes, Um-hum.

18 Q Do you know what that is a reference
19 to, sir?

20 A At this point, we were having a
21 discussion with Dan regarding the supposed
22 overdraft with JPMorgan that led to the cutting
23 off of the JPMorgan systems.

24 Q The res calc there is a reference to
25 15c3 reserve calculation, is that correct?

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1 P. Vinella

2 A I believe that is true.

3 Q Do you understand that to be a
4 reflection of what Mr. Flamming told that you the
5 reserve calculation was done as of Thursday, the
6 18th of September, 2008?

7 A Actually during that discussion,
8 Mr. Flamming believed that there was a calculation
9 that was done on the 18th. We subsequently found
10 that there was no such calculation done.

11 Q Can you turn to 593, please, which I
12 believe are your notes with Mr. Stucchio?

13 A Yes.

14 Q Do you recall who took these notes,
15 sir?

16 A This, I believe, is also Andrea
17 Calderoni.

18 Q Without telling me the contents, sir,
19 of what is under those black lines, can you tell
20 me if they reflect conversations with Mr. Stucchio
21 or with some other person?

22 A Those were conversations with
23 Mr. Stucchio.

24 Q Okay. Okay. Turning to 594, sir,
25 can you tell me what these notes refers to, sir?

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1 P. Vinella

2 A Again, these were notes that were
3 taken during the meetings on the 18th.

4 Q Do you know who took them, sir?

5 A I believe Sergio Godinho.

6 Q Okay. That is all I have for that
7 one.

8 If you could turn to 595, please.
9 These are handwritten notes, sir?

10 A Yes.

11 Q Do you know whose handwriting it is?

12 A This is mine.

13 Q What do these notes reflect, sir?

14 A Again, the meetings on the 18th.

15 Q If you could turn, sir, to the sixth
16 page.

17 To make sure, these are not Bates
18 stamped, but to make sure we are on the same page
19 here, I have as the last line, "Chase still
20 cleared Lehman's business on Friday."

21 A Yes.

22 Q Do you see up a few lines from that
23 you appear to write something, "recalc 3-3."

24 A Yes.

25 Q Then you have an arrow towards what

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P. Vinella
appears to be reg reporting?

A Yes.

Q Can you tell me what that is a reference to, sir?

A That was that they were recalculating the 3-3 reserve requirement during the week of the 15th. They had initially thought they were going to try to do it daily. They ended up doing it at least two or three times that week, and there was a discrepancy between how many times they had done it, and that the -- and this was, we were talking to the operations area at this point, and that they passed on the results to the reporting group.

Q There is a reference below that, sir, to Chase overdraft.

Do you see that?

A Yes.

Q What is that a reference to?

A Again, we spent a great deal of time talking about the -- the tri-party repo between Barclays and Chase that we did not use in the report, but we were interested in the overdraft, since that was of the elements that Mr. McIssac had talked about.

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So, when they were discussing the overdraft, at first they couldn't figure out the initial number, which turned out to be 52 billion, then Chase came back with 42 billion, and they believed that they had a total exposure of somewhere between, you know, 7 billion to 23 billion. They never were able to find out the 42 billion.

Eventually, Chase came back and said there wasn't an overdraft. So, this was just memorializing that discussion.

Q Who at Chase told who at Barclays that there wasn't an overdraft?

A My understanding was that was where they had got -- this was Ricky Policke mentioning that he was on the phone with people at Chase trying to figure this out, and he believed that Dan Flamming had also, was involved with talking to the people at Chase about the overdraft.

And this, you know, may have been Ricky presenting things he heard internally. He did not say that this came specifically came from, this discussion came between him and Chase people.

Q You say at the bottom, "Chase still

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cleared Lehman's business on Friday."

A Right.

Q Okay. Who told you that?

A Ricky Policke specifically talked about that fixed income trades were still clearing in the morning and, actually, the first trades, this collateral that was going between Lehman Brothers and Barclays specifically that he mentioned, and then somewhere around 10 o'clock is when the access to the systems were turned off.

Q 10 a.m. Friday morning?

A That was about the timeframe, right.

Q That's I have for that exhibit, sir. Can we take out 596, please?

A Yes.

Q Can you tell me whose notes these are?

A These are Jeanette Jin's notes?

Q And do you know what they relate to? Are these also the December 18th?

A Well, this would include December 18th. I also believe that she included some of the phone conversations that we had subsequent to the 18th.

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P. Vinella

Q Okay. Turning to the third page, sir, which is Bates stamped BCI EX 00297277. Do you have that page, sir?

A Yes.

Q Can you read what the first line says?

A All monies were sent out for customers' something fund, I think.

Q You don't know what that word is before "fund"?

A No.

Q And then below that, can you read the next sentence, please.

A I believe it says -- I don't know what the second word is, but every something withdraw is under review of the SEC.

Q And then it says what, SEC --

A "SEC," I am not sure what that next word is, "specific instructions with their approval."

Q And do you know who, which interview rather, these notes reflect?

A I believe this is the Ricky Policke and David Roden interview.

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1 P. Vinella
2 MR. OXFORD: Off the record for a
3 second.
4 (Discussion held off the record.)

5 BY MR. OXFORD:

6 Q Could you turn to the page that ends
7 in Bates number 7294, sir?

8 A Okay.

9 Q Do you see at the top, it appears to
10 read, "clients left, all high net worth"?

11 A Yes.

12 Q Is that how you read that, too?

13 A I do.

14 Q It also says, "90,000 accounts to
15 Barclays."

16 A Yes.

17 Q Whose interview does this reflect, if
18 you know, sir?

19 A This is actually the interview, the
20 phone call with Allister Blackwell.

21 Q Did Mr. Blackwell tell you when these
22 90,000 accounts went to Barclays?

23 A I believe that was subsequent to
24 LBI's liquidation.

25 Q So, sometime after the close of
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1 P. Vinella
2 business on the 19th?

3 A Yeah. I don't know if it was the
4 week of the 22nd or the following week when it
5 started and I'm not sure when they finally all
6 went over.

7 If I can also correct the record for
8 one thing I said earlier. You were asking who
9 mentioned the PAM accounts had left. Now that I
10 am looking at this, it's Allister Blackwell was
11 the person that told us that, not Tony Stucchio.

12 Q And Mr. Blackwell told you, to your
13 recollection, sir, that the PAM accounts left LBI
14 prior to the 19th of September?

15 A They started to leave, is what he
16 mentioned; and, again, I didn't know what
17 proportion had left or not.

18 Q You don't know if one PAM account
19 left or ten or more than ten?

20 A Right.

21 Q Can you turn to the page that has the
22 Bates number ending 7298?

23 Do you have the page, sir?

24 A I do.

25 Q Are you able to read for me what
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1 P. Vinella
2 appears above that black line?

3 A "Calculates in reg reporting group,
4 SEC Mike -- reviewed anything done \$3.6 billion in
5 cash with a down arrow," and then people not
6 something something either. I can't read the last
7 of those notes.

8 Q "People not pay them either,"
9 perhaps?

10 A It could be that, yes.

11 Q Do you know what these notes are a
12 reference to, sir?

13 A They are -- in reference to the
14 process of drawing down the reserve account during
15 the week of the 15th, and I think the reserve
16 initially started at \$3.6 billion prior to that
17 and it went down over time. This is the result of
18 the calculation on the 16th and the 17th.

19 Q Do you know which interviewee had
20 provided the information reflected in those notes?

21 A Without talking to Jeanette, I -- I
22 can't confirm exactly which interview this was.
23 It was a phone interview, I believe.

24 Q Down the page, sir, about a third of
25 the way from the bottom, there is a reference
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1 P. Vinella
2 to -- there is three words that appear to say "the
3 clean stuff."

4 Do you see that?

5 A Yes.

6 Q Do you know what -- first of all, do
7 you agree that is what the words read?

8 A I can agree with, that that is an
9 interpretation. Again, without talking to
10 Jeanette, I wouldn't know exactly what she wrote.

11 Q You don't know what it's a reference
12 to, sir?

13 A No.

14 By the way, I do want to stand
15 corrected.

16 I think this was the meeting on the
17 18th in New York, and this is probably with -- I
18 would say with Ricky Policke, just looking at the
19 contents of the discussion.

20 Q It's not one of the phone interviews?

21 A I don't think it's one of the phone
22 interviews, now that I am looking at it in
23 context.

24 Just so you understand, I don't
25 review all the individual's notes. We talk with
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1 P. Vinella
2 each other and they go through their notes. So,
3 again I am putting this in context of other things
4 I have seen.

5 **Q Can you turn to the page that ends**
6 **with Bates number 7301?**

7 **Can you look at that page, and can**
8 **you tell me which interviewee this relates to,**
9 **sir, if you can?**

10 A I would say this was Dan Flamming.

11 **Q And Dan Flamming you met with,**
12 **personally, on the 18th in New York; correct?**

13 A Yes, we did.

14 **Q Do you see below the second black**
15 **box --**

16 A Yes.

17 **Q -- there in the middle of the page,**
18 **there is a sentence that begins or appears to**
19 **begin "his team."**

20 **Do you see that?**

21 A Yes.

22 **Q Can you read, can you read that, and**
23 **the next couple of sentences, please, until you**
24 **get to next blank line?**

25 A "His team got approval from SEC for
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1 P. Vinella
2 any movement. Dave" something "confirmed he
3 talked to SEC how things involve LBI not the
4 15c3-3."

5 **Q And it's your testimony, sir, that**
6 **these are notes of a discussion that you and your**
7 **team had with Dan Flamming; is that correct.**

8 A I do believe that is true, yes.

9 **Q Do you know who the "he" is in his**
10 **team that these notes reflect?**

11 A I believe he was talking about Bill
12 Burke at that point.

13 **Q And what did Mr. Flamming tell you**
14 **when he -- withdrawn.**

15 **What did Mr. Flamming mean when he**
16 **told you that Bill Burke's team got approval from**
17 **the SEC for any movement?**

18 MS. NEUFELDT: Objection.

19 He hasn't testified then this is a
20 verbatim transcript of Mr. Flamming's
21 statements.

22 A During the discussions with
23 Mr. Flamming, Mr. Flamming, again, was responsible
24 for making cash movements associated with the
25 treasury area. So, once the reserves were drawn
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1 P. Vinella
2 down, that money was put into the treasury cash
3 account so that the treasurer, Paolo Tonucci, that
4 he could use that; and his belief was that there
5 was an approval from the SEC when they did the 3-3
6 calculations to withdraw those funds, but he
7 wasn't first-hand in that loop; and in subsequent
8 interviews, we didn't believe that that was
9 actually the case. But Mr. Flamming believed that
10 the SEC, quote unquote, was somehow approving
11 these withdrawals.

12 The second part of that question is
13 this "he" is, actually, I believe, Dan Flamming,
14 who had had conversations with the SEC, but
15 nothing specific to the 3-3 calculations. There
16 were other issues outside that.

17 **Q Do you know what the reference to**
18 **Dave is?**

19 A I don't remember a Dave coming up.
20 So, I can't even hazard a guess who that might be.

21 **Q Can you turn to the page with the**
22 **Bates number 7310 on the end, please.**

23 A Okay.

24 **Q These are still Jeanette's notes?**

25 A I believe so, yes.

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1 P. Vinella
2 **Q Do you know, sir, which interview is**
3 **reflected in these notes?**

4 A I believe this is the telephone call
5 that we had as a follow-up with Ricky Policke and
6 David Roden.

7 **Q You see there are three black boxed,**
8 **sir?**

9 A Yes.

10 **Q Can you read for me, if you are able,**
11 **what appears between the second and third black**
12 **boxes?**

13 A "Reserve formula is not real." It
14 sounds like -- there is an up arrow. It sounds
15 like the increase in the reserve formula is not
16 real.

17 **Q Do you know what that, what that is a**
18 **reference to, sir?**

19 A We talked to Mr. Policke, Mr. Roden
20 about a number of the issues, as I mentioned, in
21 the McIssac report.

22 I believe this was specific to the
23 \$2.3 billion discrepancy that Mr. McIssac alleged
24 where there was an obligation between LBI, LBIE
25 and an LBIE customer, and they were saying
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1 P. Vinella
2 that that wasn't a real event.

3 **Q Just turn over to the next page, sir.**
4 **Can you read what the first three**
5 **lines say there?**

6 A I really can't, other than ITS. I
7 can't make head or tail of. There is 500 million
8 and looks to be 350 million and some arrows. I
9 really have no way of deciphering this one.

10 **Q After the number that appears on the**
11 **second one, can you read the third line?**

12 A "Because never be perfect."

13 **Q Do you know what that is a reference**
14 **to?**

15 A I have no context to put that note in
16 there.

17 **Q You don't know who it was a**
18 **discussion with?**

19 A Again, it could have been a note,
20 just Jeanette to remind her of something, as
21 opposed to something someone was saying.

22 So, I don't know without talking to
23 her what that alludes to.

24 **Q Can you turn to the last page of the**
25 **document, sir, with Bates number 7314.**

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1 **P. Vinella**

2 A Yes.

3 **Q Can you read what appears above the**
4 **black box, please?**

5 A I believe it said "15c3-3 done
6 daily." I am not sure what the word after that
7 is. There is an arrow going to the third line,
8 which I am not sure was supposed to be read
9 afterwards, but the second line is "all" something
10 "take money out," and then "should something done
11 with SEC under supervision."

12 That is the best I can get out of
13 that, too.

14 **Q Do you know whose interview that**
15 **reflects, sir?**

16 A I believe this is still that same
17 phone interview with Mr. Policke and Mr. Roden.

18 **Q What did Mr. Policke tell you about**
19 **the SEC's supervision in the context of this c3**
20 **reserve requirement calculation?**

21 A Again, they used the term that the --
22 the members of the SEC, or representatives of the
23 SEC were shown the calculations, and it was done
24 under their supervision was I think the term he
25 actually used.

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1 P. Vinella
2 **Q That's all I have for that document,**
3 **sir.**

4 **If you could take out the last set of**
5 **notes that I have marked as Exhibit 597, please?**

6 A Yes.

7 **Q Whose notes are these, sir?**

8 A This is Jeanette as well.

9 **Q And do you know which interview they**
10 **are notes from?**

11 A I believe this is one of the phone
12 interviews with Joel Potenciano.

13 **Q Can you read for me what it says**
14 **immediately under the black box on page one, sir?**

15 A "82 million, Bill Burke raised a
16 question of this," and then it says, "Mike" and
17 some completely undecipherable name, but I happen
18 to know that it was -- I'm not going to try to
19 pronounce his name. It was an Italian name. I
20 believe he was the head SEC supervisor at Lehman
21 Brothers at the time, Gregolia or something like
22 that.

23 **Q Is it a reference, perhaps, to Mike**
24 **Macchiardi?**

25 A Macchiardi, that is the name.

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1 P. Vinella

2 **Q Can you tell by looking at these**
3 **notes what Mr. Potenciano was telling you in**
4 **connection with the \$82 million that are**
5 **referenced here?**

6 A My recollection of the conversation
7 was that Bill Burke understood there might be an
8 issue with this, that he had gone to
9 Mr. Macchiaroli to discuss how this should be put
10 into the 3-3 calculation, and there seemed to be
11 an agreement, and this is Mr. Potenciano talking
12 that it was handled correctly.

13 Since we didn't have access to
14 Mr. Burke, we didn't want -- we -- and
15 Mr. Potenciano didn't know exactly how that was
16 corrected, we just, I think, and in my discussion
17 today, just said it was handled correctly, but we
18 don't know what that meant.

19 **Q And you didn't talk to**
20 **Mr. Macchiaroli?**

21 A No.

22 **Q Or anyone at the SEC about this?**

23 A No.

24 **Q Did Mr. Potenciano explain when**
25 **Mr. Burke knew there was an issue with the**

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P. Vinella

\$82 million?

A No.

Q You don't know whether it was before or after the liquidation of -- the SIPA liquidation of LBI on the 19th?

A No. I do not know if it was prior to the 19th or after the 19th.

Q You see midway down the unredacted passage there are the words, "second piece."

A Yes.

Q Could you read for me everything that is below that, please, if you can?

A "Second piece is the error. Bring up to SEC attention. Reserve on daily. They see adjustment for calculated?"

Do you want me to keep going.

Q Yes, please?

A "It's for NBD. If LBIE BD not customer."

Q And then --

A Continue.

Q Yes, please.

A "Woodland miscode communicated December of '08" -- 2008, sorry.

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P. Vinella

Q And below that?

A "He only, he only know December of '08."

Q What is that a reference to, sir, the Woodland piece?

A That is the coding error, when we asked Mr. Potenciano were they aware that there was a problem with the Woodlands Bank account treatment, and he said that they only, he only found out that it was a miscoding problem in December of 2008.

Q Turning to the second page of those notes, sir, can you read what appears after the number four, please?

A "436 million hold by LBI for LBIE in the 088 account, ITS. It's an intercompany amount, not necessary know if customer or not customer."

Q Again, is this, does this reflect notes of the telephone interview with Mr. Potenciano?

A It does, yes.

Q And what was Mr. Potenciano telling you in this phone interview as reflected in these

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P. Vinella

notes?

A We were discussing the \$436 million of LBI assets kept at LBIE, and he was mentioning that how it was specifically accounted for in the ITS system, and it had been recognized either as an intercompany asset or a customer asset, and he believed at that point, since it had been put into those accounts that way, that it had been treated correctly in the 3-3 calculation.

Q And then number five, 15c3 calculation, as of September 15, is that what it says?

A Yes.

Q And then it's got numbers 16, 17 and then 19; correct?

A Yes.

Q The 19 is underlined. Do you know why that is?

A What we were trying to find out was exactly how many 3-3 calculations were run during the week of the 15th. There was one that was run on Monday as of the 12th, there was another one run on the 17th as of the 16th, one run on the 18th as the 17th.

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P. Vinella

They were not able to correctly run one on the 19th because of, again, the operational problems they had.

Q Can you tell me, sir, where, if anywhere in these notes that I marked as Exhibits 592 through 597, where the interview with Mr. Tonucci is reflected? If you need to flip through them again, please do so.

A I don't know that we kept notes with Mr. Tonucci hat that point.

Q Which point is this?

A Most of the discussions that we had with Mr. Tonucci, we didn't rely on for the report, and I don't -- and those areas we did, we didn't take notes for it, so.

Q I thought you testified earlier that notes were taken of Mr. Tonucci's.

A I don't recall saying that all -- that all interviews we took notes.

Q All right. I didn't ask you about all interviews, sir, I asked you about Mr. Tonucci's interview and you told me that notes were taken for that interview.

A I will look through it. I don't know

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1 P. Vinella
2 right offhand if such notes exist, but I will be
3 happy to look through them for you.

4 **Q Thank you.**

5 MR. OXFORD: We can go off the record
6 for a second.

7 (Discussion held off the record.)

8 A The problem, again, is looking at the
9 redacted notes. It would be much easier if I
10 could look at some unredacted notes because again,
11 we didn't --

12 **Q You will find no disagreement, sir**
13 **from this side of the table.**

14 A In terms of notes being taken versus
15 notes being relied on, I don't believe that there
16 was anything in the Tonucci notes that we relied
17 on, and that's why.

18 MS. NEUFELDT: Did you initial your
19 answer?

20 THE WITNESS: Yes.

21 MR. OXFORD: Amy, given the
22 testimony, which was pretty extensive, from
23 Mr. Vinella this morning about his
24 conversations with Mr. Tonucci --

25 MS. NEUFELDT: Hum.

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1 P. Vinella
2 MR. OXFORD: -- which were
3 exclusively related to the information on
4 which he said he relied upon in his report,
5 and given his testimony that notes were, in
6 fact, taken of that conversation, I would
7 ask you to go back and check to see whether
8 or not --

9 MS. NEUFELDT: With the understanding
10 that not everything gets written down. You
11 probably noticed he, himself, didn't have a
12 lot of notes.

13 We will go back and confirm that any
14 notes of the conversation with Mr. Tonucci,
15 relevant to the issues that he discussed
16 today, we will make sure that they have been
17 produced or, if not, we will produce them.

18 MR. OXFORD: I appreciate that.
19 Obviously, we have to reserve our rights
20 with respect to questioning Mr. Vinella on
21 that subject until such time as we see those
22 notes.

23 **Q Mr. Vinella, did anybody provide you**
24 **with documentary support for the alleged errors**
25 **that Mr. McIssac discusses in his affidavit?**

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1 **P. Vinella**
2 A Other than the exhibits that Mr.
3 McIssac included, there was nothing specific that
4 I can think of.

5 **Q Did you ask anybody for that, sir?**

6 MS. NEUFELDT: Objection to form.

7 A Again, we asked for more specific
8 types of reports that would have helped
9 demonstrate the those errors exist or didn't
10 exist, but we didn't specifically say, can you
11 show us the document that the \$2.3 billion, for
12 instance, was a customer trade, but we asked for
13 trade tickets and things like that.

14 MR. OXFORD: Okay. At this time, I
15 don't have any further questions for you
16 Mr. Vinella.

17 I will reserve my rights with respect
18 to your attorney's interpretation of the
19 expert stipulation and we can take that up
20 at another time, but today I don't have
21 anything further for you.

22 I don't know if any other counsel has
23 any questions.

24 MS. CARRERO: No questions.

25 MR. DAKIS: No questions for the

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1 P. Vinella
2 Committee.

3 THE WITNESS: I did have one other
4 clarification, if I may add, just to hold
5 everyone a little longer.

6 You asked about a KEOP report, and I
7 mentioned I wasn't familiar with that. You
8 then provided the actual name associated
9 with that report independent of the -- well,
10 you mentioned.

11 MR. OXFORD: Acronym?

12 THE WITNESS: I don't want to say
13 acronym, but I guess it is an acronym as
14 opposed to abbreviation.

15 I am not familiar with that term. I
16 am familiar with operational risk reports
17 that are part of the CSE regulatory regime,
18 the CSE being the SEC's implementation of
19 ball 2. If they now call those a specific
20 name, I wouldn't understand it. But when
21 you mentioned they were key operational
22 indicators, actually, I was one of the
23 fathers of coming up with operational risk
24 indicators and operational performance
25 indicators for both banks and broker

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<p>1 P. Vinella</p> <p>2 dealers. So, I think what you are talking</p> <p>3 about is that report and, yes, I am very</p> <p>4 familiar with it.</p> <p>5 And Lehman Brothers used to call it</p> <p>6 an attestation report and we did request</p> <p>7 copies of that, but never were able to get</p> <p>8 them in the timeframes.</p> <p>9 MR. OXFORD: No further questions.</p> <p>10 Thank you.</p> <p>11 (Time noted: 5:58 p.m.)</p> <p>12 oOo</p> <p>13 I, PETER VINELLA, the witness herein, do</p> <p>14 hereby certify that the foregoing testimony of the</p> <p>15 pages of this deposition to be a true and correct</p> <p>16 transcript, subject to the corrections, if any,</p> <p>17 shown on the attached page.</p> <p>18</p> <p>19 _____</p> <p>20 PETER VINELLA</p> <p>21 Subscribed and sworn to before me this</p> <p>22 day of _____,</p> <p>23 _____</p> <p>24 NOTARY PUBLIC</p> <p>25</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1</p> <p>2 STATE OF NEW YORK) Pg. of Pgs.</p> <p>3 COUNTY OF NEW YORK)</p> <p>4 I wish to make the following changes</p> <p>5 for the following reasons:</p> <p>6 PAGE LINE</p> <p>7 _____ CHANGE: _____</p> <p>8 REASON: _____</p> <p>9 _____ CHANGE: _____</p> <p>10 REASON: _____</p> <p>11 _____ CHANGE: _____</p> <p>12 REASON: _____</p> <p>13 _____ CHANGE: _____</p> <p>14 REASON: _____</p> <p>15 _____ CHANGE: _____</p> <p>16 REASON: _____</p> <p>17 _____ CHANGE: _____</p> <p>18 REASON: _____</p> <p>19 _____ CHANGE: _____</p> <p>20 REASON: _____</p> <p>21 _____ CHANGE: _____</p> <p>22 REASON: _____</p> <p>23 _____ CHANGE: _____</p> <p>24 REASON: _____</p> <p>25 _____</p> <p>TSG Reporting - Worldwide 877-702-9580</p>																										
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<p>1</p> <p>2 C E R T I F I C A T E</p> <p>3 STATE OF NEW YORK)</p> <p>4 : SS.</p> <p>5 COUNTY OF NEW YORK)</p> <p>6</p> <p>7 I, BONNIE PRUSZYNSKI, a Notary</p> <p>8 Public with and for the State of New York,</p> <p>9 do hereby certify:</p> <p>10 That PETER VINELLA, the witness</p> <p>11 whose deposition is hereinbefore set forth,</p> <p>12 was duly sworn by me and that such deposition</p> <p>13 is a true record of the testimony given by</p> <p>14 the witness.</p> <p>15 I further certify that I am not related</p> <p>16 to any of the parties to this action by</p> <p>17 blood or marriage, and that I am in no way</p> <p>18 interested in the outcome of this matter.</p> <p>19 IN WITNESS WHEREOF, I have hereunto</p> <p>20 set my hand this 5th of February, 2010.</p> <p>21</p> <p>22 _____</p> <p>23 Bonnie Pruszyński</p> <p>24</p> <p>25</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1</p> <p>2</p> <p>3 I N D E X</p> <table><thead><tr><th>WITNESS</th><th>PAGE</th></tr></thead><tbody><tr><td>PETER VINELLA</td><td></td></tr><tr><td>BY MR. OXFORD</td><td>5</td></tr></tbody></table> <p>7</p> <p>8 E X H I B I T S</p> <table><tbody><tr><td>Exhibit 590 Affidavit of Daniel McIssac</td><td>5</td></tr><tr><td>Exhibit 591 Report of Peter Vinella</td><td>5</td></tr><tr><td>Exhibit 592 BCI EX 00297254-260</td><td>5</td></tr><tr><td>Exhibit 593 BCI EX 00297261</td><td>5</td></tr><tr><td>Exhibit 594 BCI EX 00297262-265</td><td>5</td></tr><tr><td>Exhibit 595 BCI EX 297266-274</td><td>5</td></tr><tr><td>Exhibit 596 BCI EX 00297275-314</td><td>5</td></tr><tr><td>Exhibit 597 BCI EX 297315-316</td><td>5</td></tr><tr><td>Exhibit 598 SEC brief</td><td>222</td></tr><tr><td>Exhibit 599 E-mail</td><td>269</td></tr></tbody></table> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	WITNESS	PAGE	PETER VINELLA		BY MR. OXFORD	5	Exhibit 590 Affidavit of Daniel McIssac	5	Exhibit 591 Report of Peter Vinella	5	Exhibit 592 BCI EX 00297254-260	5	Exhibit 593 BCI EX 00297261	5	Exhibit 594 BCI EX 00297262-265	5	Exhibit 595 BCI EX 297266-274	5	Exhibit 596 BCI EX 00297275-314	5	Exhibit 597 BCI EX 297315-316	5	Exhibit 598 SEC brief	222	Exhibit 599 E-mail	269
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EXHIBIT E

1
2 UNITED STATES BANKRUPTCY COURT
3 SOUTHERN DISTRICT OF NEW YORK

4 -----x

5 In Re:

6 Chapter 11

7 LEHMAN BROTHERS Case No. 08-13555(JMP)
8 HOLDINGS, INC., et al, (Jointly Administered)
9 Debtors.

10 -----x

11
12 DEPOSITION OF ROBERT A. MARTINI

13 New York, New York

14 June 24, 2010

15
16 Reported by:

17 MARY F. BOWMAN, RPR, CRR

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June 24, 2010
11:00 a.m.

Deposition of ROBERT A. MARTINI, held
at the offices of Hughes, Hubbard & Reed, LLP,
One Battery Park Plaza, New York, New York,
before Mary F. Bowman, a Registered Professional
Reporter, Certified Realtime Reporter, and
Notary Public of the State of New York and New
Jersey.

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IT IS HEREBY STIPULATED AND AGREED, by
and between the attorneys for the respective
parties herein, that filing and sealing be
and the same are hereby waived.

IT IS FURTHER STIPULATED AND AGREED
that all objections, except as to the form
of the question, shall be reserved to the
time of the trial.

IT IS FURTHER STIPULATED AND AGREED
that the within deposition may be sworn to
and signed before any officer authorized to
administer an oath, with the same force and
effect as if signed and sworn to before the
Court.

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ROBERT A. MARTINI,
called as a witness by the parties,
having been duly sworn, testified as follows:

EXAMINATION BY

MR. OXFORD:

Q. Good morning, Mr. Martini.

A. Good morning.

Q. As you know, my name is Neil Oxford. We met off the record. I represent the SIPA trustee in this matter.

Can you tell me if you have ever been deposed previously?

A. Several years ago in a motor vehicle accident case.

Q. Then you know the basic ground rules of a deposition. I am going to ask you questions, you are going to answer them. If you could wait until I finish my question before you try to answer it, it will give Amy a chance to object, in the unlikely event that she chooses to do so.

MS. NEUHARDT: I can't imagine how that would happen.

Q. And it will allow Mary to take

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everything down.

If you could make sure that your answers are verbal rather than nodding or shaking your head, for example, that will help things go quickly as well.

This is not intended to be some sort of endurance test, so if you need a break at any time, let me know and I will be happy to give you one.

It may also happen that you don't understand one or more of my questions fully, in which case just ask me to clarify and I would be more than happy to do so.

A. OK.

Q. Can you tell me what your educational background is, starting with college?

A. I received a BS in accounting from the University of Dayton. And no further formal education. I have industry licenses, a Series 7, Series 24 and Series 27.

Q. Are those licenses current, sir?

A. Yes.

Q. How long have you held those?

A. Since -- Series 27 and Series 7 since

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1998, and Series 24 is sometime soon after. I'm not sure of the exact date.

Q. When did you graduate from Dayton, sir?

A. 1983.

Q. Did you have a minor?

A. No.

Q. Did you take any courses in law?

A. No.

Q. You said you have no formal education after Dayton; is that correct?

A. Correct.

Q. How were you first employed after you graduated, sir?

A. First worked in a municipal bond firm, worked there for -- from 1983 to 1990.

Q. What's the name of the firm?

A. Halpert Oberst & Company,
H-a-l-p-e-r-t, O-b-e-r-s-t, & Company.

Q. Is that based in New York?

A. It is based in Millburn, New Jersey.

Q. What did you do for Halpert Oberst?

A. At the end, I was their chief compliance officer.

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Q. Can you briefly describe what your responsibilities were as chief compliance officer?

A. Responsibilities was for the FOCUS report, which would include net capital and customer reserve calculation, as well as the registration of registered representatives, anything related to their support.

Q. By customer reserve calculation, just so I make sure we are talking the same language here, is that the calculation that is performed as required under SEC Rule 15(c) 3-3?

A. Correct.

Q. So if I use either of those terms, you will understand what we are talking about?

A. Yes, yes.

Q. Did you perform the customer reserve calculations yourself in this role, sir, or was it something that you supervised?

A. I was a participant in that calculation. It was supervised by the chief financial officer.

Q. Can you describe your participation in that calculation of the customer reserve

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<p>1 MARTINI</p> <p>2 calculation in the time you were at Halpert</p> <p>3 Oberst?</p> <p>4 A. It would have been in the allocation</p> <p>5 of the stock record, which was a manual stock</p> <p>6 record allocation.</p> <p>7 Q. Are you able to describe in lay terms</p> <p>8 what you mean by allocation of stock record in</p> <p>9 this context?</p> <p>10 A. Sure. We would take a manual stock</p> <p>11 record, and several people would, based on</p> <p>12 hierarchy, allocate the positions. So box</p> <p>13 location versus customer long. First we would</p> <p>14 go through a priority that was set by the firm,</p> <p>15 agreed by the NASD.</p> <p>16 Q. OK. What was your next position after</p> <p>17 Halpert?</p> <p>18 A. I moved in 1990, later in the year, to</p> <p>19 Mabon Securities Corp.</p> <p>20 Q. M-a-y-b-o-n-d?</p> <p>21 A. M-a-b-o-n.</p> <p>22 Q. Where is Mabon based?</p> <p>23 A. New York.</p> <p>24 Q. What was your title when you joined</p> <p>25 Mabon?</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 MARTINI</p> <p>2 A. I honestly don't know. Sorry.</p> <p>3 Q. How long were you with Mabon?</p> <p>4 A. I was with Mabon until 1993.</p> <p>5 Q. Do you remember your title when you</p> <p>6 left?</p> <p>7 A. I'm not sure. I mean I have been --</p> <p>8 the title may have been something like associate</p> <p>9 or something.</p> <p>10 Q. Can you describe your responsibilities</p> <p>11 in the three years you were at Mabon?</p> <p>12 A. I was responsible for the net capital</p> <p>13 computation, so SEC Rule 15c3-1.</p> <p>14 Q. Did you have any responsibility for</p> <p>15 the customer reserve calculation in that time?</p> <p>16 A. No. I had some interaction with the</p> <p>17 customer reserve, but I did not supervise it.</p> <p>18 Q. What was your interaction with the</p> <p>19 customer reserve calculation?</p> <p>20 A. It may have been a backup to the</p> <p>21 person who did the formula, so I would have had</p> <p>22 to have known how to do it, but -- so on days</p> <p>23 when the individual was out on vacation, I would</p> <p>24 have stepped in and performed the formula.</p> <p>25 Q. Is it correct that Mabon was a</p> <p>TSG Reporting - Worldwide 877-702-9580</p>
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<p>1 MARTINI</p> <p>2 registered broker/dealer?</p> <p>3 A. Yes.</p> <p>4 Q. Is that also correct for Halpert?</p> <p>5 A. Yes.</p> <p>6 Q. After you left Mabon in 1993, where</p> <p>7 did you go?</p> <p>8 A. Yamiachi International.</p> <p>9 Q. I'm sorry, UAG?</p> <p>10 A. Y-a-m-i-a-c-h-i.</p> <p>11 Q. They're based where, sir?</p> <p>12 A. New York, headquarters in Tokyo. New</p> <p>13 York. SEC broker/dealer was headquartered in</p> <p>14 New York.</p> <p>15 Q. How long were you with Yamiachi?</p> <p>16 A. 1995.</p> <p>17 Q. What was your title there, sir?</p> <p>18 A. AVP.</p> <p>19 Q. Which stands for what?</p> <p>20 A. Assistant vice president.</p> <p>21 Q. And what were your responsibilities as</p> <p>22 AVP?</p> <p>23 A. I was in charge of the reg. reporting</p> <p>24 group, which would have included the FOCUS</p> <p>25 report, net capital computation and customer</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 MARTINI</p> <p>2 reserve calculations.</p> <p>3 Q. Were you involved in the actual</p> <p>4 computation of the customer reserve calculation,</p> <p>5 sir, or were you supervising it?</p> <p>6 MS. NEUHARDT: Objection, form.</p> <p>7 A. I was both. Sorry. Say that again,</p> <p>8 please.</p> <p>9 Q. Were you involved in the actual</p> <p>10 computation of the customer reserve calculation</p> <p>11 in this time, sir?</p> <p>12 A. Yes.</p> <p>13 Q. So on a week-to-week basis, you would</p> <p>14 have a role in computing --</p> <p>15 A. Yes.</p> <p>16 Q. -- the requirement under SEC Rule</p> <p>17 15c3-3?</p> <p>18 A. Yes.</p> <p>19 MS. NEUHARDT: You have to let him</p> <p>20 finish the question, please.</p> <p>21 Q. Yes.</p> <p>22 Did you have a particular role in that</p> <p>23 computation, sir?</p> <p>24 A. It was to compute the reserve formula.</p> <p>25 So I would have over time eventually had one</p> <p>TSG Reporting - Worldwide 877-702-9580</p>

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<p>1 MARTINI</p> <p>2 individual working for me eventually I would</p> <p>3 have supervised, but initially it was a one-man</p> <p>4 show and eventually turned into a two-person</p> <p>5 department.</p> <p>6 Q. How large a broker/dealer was</p> <p>7 Yamiachi?</p> <p>8 A. In terms of number of people?</p> <p>9 Q. In terms of the number of trades per</p> <p>10 day.</p> <p>11 A. That I don't know. I can tell you</p> <p>12 they had somewhere around a 20 billion dollar</p> <p>13 balance sheet. Very diverse business, so --</p> <p>14 Q. Have you finished your answer, sir?</p> <p>15 A. Yes.</p> <p>16 Q. Was the 20 billion balance sheet just</p> <p>17 the broker/dealer balance sheet or was that the</p> <p>18 corporation as a whole?</p> <p>19 A. Just the broker/dealer.</p> <p>20 Q. Where did you go after you left</p> <p>21 Yamiachi in 1995?</p> <p>22 A. Back to Mabon.</p> <p>23 Q. For how long, sir?</p> <p>24 A. 1995.</p> <p>25 Q. You were there for less than a year?</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 MARTINI</p> <p>2 A. Yeah.</p> <p>3 MR. OXFORD: Off the record.</p> <p>4 (Discussion held off the record)</p> <p>5 Q. Was your role in Mabon, sir, in 1995</p> <p>6 the same as it was when you were employed by</p> <p>7 them previously?</p> <p>8 A. When I came back, I was in charge of</p> <p>9 the reg. reporting team.</p> <p>10 Q. In that capacity sir, were you also in</p> <p>11 charge of the customer reserve calculation?</p> <p>12 A. Yeah, customer reserve and net</p> <p>13 capital.</p> <p>14 Q. Later in 1995, when you left Mabon</p> <p>15 again, where did you go?</p> <p>16 A. Nikko Securities. N-i-k-k-o.</p> <p>17 Q. For how long, sir?</p> <p>18 A. Until 1998, when they closed their</p> <p>19 U.S. operation.</p> <p>20 Q. What was your title at Nikko, sir?</p> <p>21 A. First vice president and controller.</p> <p>22 Q. What were your responsibilities in</p> <p>23 that capacity, sir?</p> <p>24 A. Responsible for the regulatory filings</p> <p>25 for broker/dealer, general ledger, legal entity</p> <p>TSG Reporting - Worldwide 877-702-9580</p>
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<p>1 MARTINI</p> <p>2 controller for the broker/dealer.</p> <p>3 Q. Were you responsible for the</p> <p>4 computation of the customer reserve calculation?</p> <p>5 A. Yes.</p> <p>6 Q. Was that a supervisory responsibility,</p> <p>7 sir, or were you involved in computing it on a</p> <p>8 weekly basis yourself?</p> <p>9 MS. NEUHARDT: Objection to form.</p> <p>10 A. Supervised.</p> <p>11 Q. From 1998, sir, where were you</p> <p>12 employed?</p> <p>13 A. Worked for Weiss, Peck & Greer.</p> <p>14 Q. G-r-e-e-r?</p> <p>15 A. Yup.</p> <p>16 Q. Where are they located?</p> <p>17 A. New York.</p> <p>18 Q. For how long, sir?</p> <p>19 A. 2005.</p> <p>20 Q. And your title there, sir, in those</p> <p>21 seven years?</p> <p>22 A. Senior vice president.</p> <p>23 Q. What were your responsibilities?</p> <p>24 A. Managed the broker/dealer control</p> <p>25 functions, so again, legal entity control and</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 MARTINI</p> <p>2 reg. reporting for the entity, for the U.S.</p> <p>3 broker/dealer.</p> <p>4 Q. Did you have any responsibility for</p> <p>5 the computation of the customer reserve</p> <p>6 calculation?</p> <p>7 A. Yes.</p> <p>8 Q. What was that responsibility?</p> <p>9 A. Responsible for supervision of that.</p> <p>10 Q. You joined Barclays in 2007, correct,</p> <p>11 sir?</p> <p>12 A. Yes.</p> <p>13 Q. Where were you employed between 2005</p> <p>14 and 2007?</p> <p>15 A. New York Stock Exchange.</p> <p>16 Q. What was your title there, sir?</p> <p>17 A. Principal finance coordinator.</p> <p>18 Q. Can you briefly describe your</p> <p>19 responsibilities?</p> <p>20 A. I was responsible for the</p> <p>21 surveillance, financial operational compliance</p> <p>22 and surveillance of 20 U.S. broker/dealers.</p> <p>23 Q. Was one of those U.S. broker/dealers</p> <p>24 LBI?</p> <p>25 A. The last three months of my employment</p> <p>TSG Reporting - Worldwide 877-702-9580</p>

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there, I had LBI.

Q. Can you explain to me what was involved in your surveillance of the U.S. broker/dealers during your time at the New York Stock Exchange?

A. I would review FOCUS reports that were submitted monthly and be the point of contact for any firm that we were responsible for in terms of issues that they had with the relationship manager.

Q. What's a FOCUS report, sir?

A. It is -- stands for financial and operational combined uniform single report. It is -- contains -- a monthly report that contains balance sheet, P&L, reserve calc., net capital calc., CFTC seg. and secure calcs, and any other operational and market risk and credit risk schedules.

Q. When you say reserve calc., sir, what are you referring to?

A. 15c3-3 calculation as of the month-end date.

Q. So the broker/dealers would report in the FOCUS report a variety of data, including TSG Reporting - Worldwide 877-702-9580

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what their 15c3-3 reserve calculation was; is that correct?

A. Correct.

Q. And you at the New York Stock Exchange would review it for what purposes, sir?

A. We would review it for sharp variances, things that raised questions. You know, potentially looking for anything that would represent change in business, things along those lines.

Q. Sharp variance from what, sir?

A. Month to month.

Q. So if they -- if the reserve calculation showed a sharp increase or decrease from month to month, that would raise questions in your mind; is that correct?

A. Correct. Or even within lines in the reserve calculation, if we saw sharp swings, we may contact the firm.

Q. Did the New York Stock Exchange conduct any other regular review of the 15c3-3 calculations of broker/dealers during the time you were employed there?

MS. NEUHARDT: Objection, form.

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A. Actually, please say that for me one more time.

Q. Sure.

MR. OXFORD: Can you read it back.
(Record read)

A. They have a separate team, an examination team that would perform annual reviews of the firms' books and records and financial regulatory reports.

Q. Did you have any involvement with that team, sir?

A. No.

(Exhibit 828, declaration marked for identification, as of this date.)

Q. I should have asked you this at the start of the deposition, sir. What -- did you do anything to prepare for this deposition today?

A. I reviewed my declaration, as well as the McIsaac rebuttal or affidavit.

Q. The declaration you are referring to, sir, is the document that I have marked as Exhibit 828 to your deposition; is that correct?

A. Correct.

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Q. I am also handing you what's been marked previously as Exhibit 590, as well as Exhibit 693.

For the record, I will identify Exhibit 590 as the affidavit of Daniel McIsaac dated October 5, 2009, and Exhibit 693 as a rebuttal report of Dan McIsaac dated March 14, 2010.

Is it your testimony, sir, you reviewed both -- withdrawn.

Is it your testimony, sir, you reviewed all three of these documents in preparation for your deposition?

A. I reviewed 828 and 693.

Q. You did not review 590 in preparation for your deposition?

A. No.

Q. Have you seen that document before, sir?

A. Not to my knowledge.

Q. Did you do anything else to prepare for your deposition, sir?

A. I spoke to members of my team and members in operations. Member in operation.

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<p>1 MARTINI</p> <p>2 Managing directors, who would have knowledge</p> <p>3 of -- or former Lehman employees that would have</p> <p>4 knowledge of their customer reserve</p> <p>5 calculations.</p> <p>6 Q. Who on your team did you speak to in</p> <p>7 preparation for this deposition?</p> <p>8 A. Joel Potenciano.</p> <p>9 Q. What is Mr. Potenciano's role?</p> <p>10 A. He is vice president in charge of our</p> <p>11 net capital team.</p> <p>12 Q. Is he a former Lehman employee, sir?</p> <p>13 A. Yes.</p> <p>14 Q. Currently employed by Barclays,</p> <p>15 correct?</p> <p>16 A. Correct.</p> <p>17 Q. What did you talk to Mr. Potenciano</p> <p>18 about?</p> <p>19 A. We spoke about his access to LBI</p> <p>20 information and his interaction with employees</p> <p>21 of the TSA.</p> <p>22 Q. Let's focus on the first part of your</p> <p>23 answer, sir. What access to LBI information did</p> <p>24 you discuss with Mr. Potenciano?</p> <p>25 A. My discussion was what information</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 MARTINI</p> <p>2 that he has access to, so, for example, what I</p> <p>3 found is -- what I also know from my personal</p> <p>4 knowledge of being a senior member of finance,</p> <p>5 that Barclays when they acquired certain assets</p> <p>6 or businesses from LBI, that information, our</p> <p>7 reg. team, whether they are Barclays or Lehman</p> <p>8 employees, have access to that information.</p> <p>9 Q. I am confused by your last answer,</p> <p>10 sir. You said, "our reg. team, whether they are</p> <p>11 Barclays or Lehman employees, have access to</p> <p>12 that information." Do you mean to say that your</p> <p>13 regulatory team, Barclays, employs Lehman</p> <p>14 employees?</p> <p>15 A. Legacy Barclays and legacy Lehman</p> <p>16 employees, are now Barclays employees.</p> <p>17 Q. OK, I appreciate that clarification.</p> <p>18 Can you tell me what Mr. Potenciano</p> <p>19 told you as -- in as much detail as you can</p> <p>20 about the information, the LBI information to</p> <p>21 which he has access?</p> <p>22 A. Mr. Potenciano does not have access to</p> <p>23 LBI information, that he is only permitted to</p> <p>24 access information through the trustee, at the</p> <p>25 trustee's direction. And that would come</p> <p>TSG Reporting - Worldwide 877-702-9580</p>
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<p>1 MARTINI</p> <p>2 through Bill Burke, who is their main employee</p> <p>3 regarding 15c3-3.</p> <p>4 Q. Whose main employee regarding 15c3-3?</p> <p>5 A. TSA, the trustee.</p> <p>6 Q. Let's define some terms here.</p> <p>7 A. Sure.</p> <p>8 Q. The TSA stands for what, sir?</p> <p>9 A. I think transition -- I could check.</p> <p>10 Transition services agreement, I believe.</p> <p>11 Q. What is that, to your understanding,</p> <p>12 sir?</p> <p>13 A. It is a group of people that work for</p> <p>14 the trustee. They may be Barclays employees in</p> <p>15 name, so they may be paid by Barclays, but they</p> <p>16 work at the direction and instruction of the</p> <p>17 trustee and do not work for the U.S.</p> <p>18 broker/dealer, Barclays Capital, Inc.</p> <p>19 Q. And you said that Mr. Bill Burke is</p> <p>20 the main employee of the TSA?</p> <p>21 A. As it relates to 15c3-3, my knowledge</p> <p>22 of Bill Burke in the industry is he is the</p> <p>23 senior most knowledgeable person of LBI's 15c3-3</p> <p>24 calculation.</p> <p>25 Q. Have you ever spoken to Mr. Burke?</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 MARTINI</p> <p>2 A. I have.</p> <p>3 Q. Did you speak to Mr. Burke in</p> <p>4 connection with your deposition?</p> <p>5 A. No.</p> <p>6 Q. Did you speak to Mr. Burke in</p> <p>7 connection with your declaration?</p> <p>8 A. No.</p> <p>9 Q. Have you spoken to Mr. Burke in</p> <p>10 connection with -- have you spoken to Mr. Burke</p> <p>11 since you joined Barclays Capital?</p> <p>12 A. Yes, as hello, things like that.</p> <p>13 Q. Have you spoken to him in any</p> <p>14 professional capacity, sir?</p> <p>15 A. We may have discussed topics regarding</p> <p>16 interpretive issues in general, but never</p> <p>17 regarding the business of LBI.</p> <p>18 Q. What interpretive issues do you think</p> <p>19 you have discussed with Mr. Burke?</p> <p>20 A. I may have asked Mr. Burke his opinion</p> <p>21 of capital treatment for certain types of</p> <p>22 assets, which is a very common thing that we do</p> <p>23 in the industry. I speak to many of my</p> <p>24 counterparts across the firm, Goldman, Morgan</p> <p>25 Stanley.</p> <p>TSG Reporting - Worldwide 877-702-9580</p>

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<p>1 MARTINI</p> <p>2 Q. And does the capital treatment that</p> <p>3 you have just testified to, the topic you</p> <p>4 discussed with Mr. Burke, does that relate in</p> <p>5 any way to the customer reserve calculation?</p> <p>6 A. No.</p> <p>7 Q. Have you had any discussions with</p> <p>8 Mr. Burke in connection with the customer</p> <p>9 reserve calculation, whether LBI or BCI?</p> <p>10 A. No.</p> <p>11 Q. Does the capital treatment which was</p> <p>12 the topic of your conversation with Mr. Burke,</p> <p>13 does that relate to the net capital rule?</p> <p>14 A. Net capital rule, yes.</p> <p>15 Q. That's a SEC rule, correct?</p> <p>16 A. Correct.</p> <p>17 Q. Is it your testimony, sir, it is</p> <p>18 common within the industry for people in</p> <p>19 positions such as yours to consult with their</p> <p>20 peers about how these SEC rules are interpreted?</p> <p>21 A. Yes.</p> <p>22 MS. NEUHARDT: Objection to form.</p> <p>23 Q. And why do you do so, sir?</p> <p>24 A. Make sure that the treatment is</p> <p>25 consistent across the industry. Rules are</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 MARTINI</p> <p>2 relatively in many cases hard to interpret</p> <p>3 without getting a little sense of how everybody</p> <p>4 interprets them.</p> <p>5 Q. Is it part of your responsibility at</p> <p>6 Barclays, sir, to interpret the SEC rules?</p> <p>7 A. Yes.</p> <p>8 Q. And just so we are clear, it is part</p> <p>9 of your responsibility at Barclays to interpret</p> <p>10 SEC Rule 15c3-3, correct?</p> <p>11 A. Correct.</p> <p>12 Q. Was it also your responsibility to</p> <p>13 interpret that same rule when you held the</p> <p>14 positions in the various broker/dealers that you</p> <p>15 have told me you worked in from 1983 onwards?</p> <p>16 MS. NEUHARDT: Objection to form.</p> <p>17 A. If you could break that up for me,</p> <p>18 please.</p> <p>19 Q. Well, I can. I'm not sure anybody</p> <p>20 wants me to, but if you want me to, I am happy</p> <p>21 to do so.</p> <p>22 What I am trying to understand, sir,</p> <p>23 is whether your role in interpreting Rule 15c3-3</p> <p>24 is unique to your employment with Barclays or</p> <p>25 whether you had a similar role in any other</p> <p>TSG Reporting - Worldwide 877-702-9580</p>
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<p>1 MARTINI</p> <p>2 broker/dealer which employed you prior to your</p> <p>3 employment with Barclays.</p> <p>4 A. At Weiss, Peck & Greer, I would have</p> <p>5 been responsible for interpreting 15c3-3 and</p> <p>6 15c3.</p> <p>7 At Nikko, I would have been</p> <p>8 responsible for interpreting those rules as</p> <p>9 well. And at Yamiachi as well.</p> <p>10 Q. Now, you're not a lawyer, sir, are</p> <p>11 you?</p> <p>12 A. No.</p> <p>13 Q. Do you have any training in law?</p> <p>14 A. No.</p> <p>15 Q. Can you tell me how it is that you</p> <p>16 consider yourself qualified to interpret SEC</p> <p>17 Rule 15c3-3?</p> <p>18 MS. NEUHARDT: Objection.</p> <p>19 A. From my extensive experience in the</p> <p>20 industry, having -- in my roles throughout my</p> <p>21 career, having managed SEC, New York Stock</p> <p>22 Exchange examinations, through my role of</p> <p>23 working with the business and all of these</p> <p>24 companies.</p> <p>25 These rules are financial operational</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 MARTINI</p> <p>2 in nature.</p> <p>3 Q. Can you explain what you mean by the</p> <p>4 last comment?</p> <p>5 MS. NEUHARDT: Objection, form.</p> <p>6 A. So the rules are related to the --</p> <p>7 they are financial and operational in nature.</p> <p>8 So the rules are not -- are about how you treat</p> <p>9 things for reserve computation. They are going</p> <p>10 to be about operational issues or financial</p> <p>11 issues or net capital or capital treatment</p> <p>12 issues as opposed to nonfinancial or operational</p> <p>13 issues, such as sales practice or things along</p> <p>14 those lines.</p> <p>15 Q. Are you drawing a distinction, sir,</p> <p>16 between the financial and operational nature of</p> <p>17 these rules and the legal nature of these rules?</p> <p>18 A. I don't understand really.</p> <p>19 Q. You don't understand my question?</p> <p>20 A. No.</p> <p>21 Q. I can try another question.</p> <p>22 In your extensive experience in the</p> <p>23 industry, sir, are the individuals who are</p> <p>24 responsible in broker/dealers in the U.S. for</p> <p>25 interpreting SEC Rule 15c3-3 generally lawyers</p> <p>TSG Reporting - Worldwide 877-702-9580</p>

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<p>1 MARTINI</p> <p>2 or legally qualified personnel or are they</p> <p>3 people with a background such as yours?</p> <p>4 MS. NEUHARDT: Objection to form.</p> <p>5 A. Backgrounds such as mine.</p> <p>6 Q. Does that answer apply to how Barclays</p> <p>7 runs its regulatory reporting department today,</p> <p>8 sir?</p> <p>9 MS. NEUHARDT: Objection to form.</p> <p>10 A. Yes.</p> <p>11 Q. I would like to go back to where we</p> <p>12 got a little distracted, or at least I did, and</p> <p>13 go back to your conversation with</p> <p>14 Mr. Potenciano.</p> <p>15 Mr. Potenciano, you said he was in</p> <p>16 charge of net capital at Barclays?</p> <p>17 A. Yes.</p> <p>18 Q. Does he have any responsibility for</p> <p>19 calculating the customer reserve requirement at</p> <p>20 Barclays?</p> <p>21 A. No.</p> <p>22 Q. Is it part of his role to have access</p> <p>23 to LBI information that would be relevant to the</p> <p>24 calculation of the 15c3-3 reserve requirement</p> <p>25 that relates to LBI on September 19, 2008?</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 MARTINI</p> <p>2 MS. NEUHARDT: Objection, form.</p> <p>3 A. My discussions with Mr. Potenciano, he</p> <p>4 does not have access to the information, the</p> <p>5 data contained in the systems to compute the LBI</p> <p>6 reserve computation.</p> <p>7 Q. Would Mr. Potenciano have, in the</p> <p>8 course of his duties at Barclays, any reason to</p> <p>9 have access to that data, sir?</p> <p>10 MS. NEUHARDT: Objection to form.</p> <p>11 A. I'm sorry, can you rephrase that for</p> <p>12 me.</p> <p>13 Q. Sure.</p> <p>14 Mr. Potenciano is responsible, he is</p> <p>15 in charge of the net capital computation at</p> <p>16 Barclays, correct?</p> <p>17 A. Correct.</p> <p>18 Q. He is not responsible for the 15c3-3</p> <p>19 calculation at Barclays, correct?</p> <p>20 A. Correct.</p> <p>21 Q. Would there be any reason for</p> <p>22 Mr. Potenciano on a day-to-day basis at Barclays</p> <p>23 to have access to the information that he would</p> <p>24 need to compute the 15c3-3 reserve calculation</p> <p>25 for LBI back from September 19, 2008?</p> <p>TSG Reporting - Worldwide 877-702-9580</p>
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<p>1 MARTINI</p> <p>2 MS. NEUHARDT: Objection to form.</p> <p>3 A. The focus of that question for</p> <p>4 Mr. Potenciano is regarding his interaction with</p> <p>5 TSA and Bill Burke regarding several times when</p> <p>6 he needed to work with them per the trustee's</p> <p>7 instruction.</p> <p>8 Q. OK, we are going to have to break that</p> <p>9 out a little more.</p> <p>10 What interaction did Mr. Potenciano</p> <p>11 have with the TSA and Bill Burke that was the</p> <p>12 subject of the conversation that you had with</p> <p>13 Mr. Potenciano?</p> <p>14 A. My discussions with Mr. Potenciano,</p> <p>15 over time the trustee, as per the -- my</p> <p>16 understanding of the TSA arrangement, who are</p> <p>17 ring-fenced employees for the trustee, that at</p> <p>18 times at the direction of the trustee,</p> <p>19 Mr. Potenciano would be requested to assist</p> <p>20 Mr. Burke in whatever he was working on.</p> <p>21 When that occurred, I was alerted so</p> <p>22 that I knew, number one, how long he would be</p> <p>23 doing that, so I could make sure we had backup.</p> <p>24 In other words, Mr. Potenciano was not able to</p> <p>25 discuss information with me regarding what</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 MARTINI</p> <p>2 occurred in his discussions with LBI, nor did he</p> <p>3 speak to Mr. Burke about information about</p> <p>4 Barclays Capital.</p> <p>5 Q. I see. So you're -- what you are</p> <p>6 telling me is there was a wall -- withdrawn.</p> <p>7 Let's back up.</p> <p>8 Mr. Potenciano is employed by</p> <p>9 Barclays, correct?</p> <p>10 A. Correct.</p> <p>11 Q. He is not part of the ring-fenced</p> <p>12 group that works at the direction of the trustee</p> <p>13 under the TSA, correct?</p> <p>14 MS. NEUHARDT: You're talking about</p> <p>15 today?</p> <p>16 MR. OXFORD: That's a good</p> <p>17 clarification, Amy.</p> <p>18 Q. Today does he work under the direction</p> <p>19 of the trustee under the TSA?</p> <p>20 A. No. He works for me under Barclays</p> <p>21 Capital, Inc., U.S. broker/dealer.</p> <p>22 Q. At any time, to your knowledge, has</p> <p>23 Mr. Potenciano worked for the TSA under the</p> <p>24 direction of the trustee?</p> <p>25 A. That I don't know, only because the</p> <p>TSG Reporting - Worldwide 877-702-9580</p>

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early days of the integration, I don't know who worked for who.

Q. Is it your testimony, sir, that there is a wall in effect between the TSA employees and the Barclays employees through which information about the TSA activities and the Barclays activities cannot pass? May not, no passing, wall.

A. That is my understanding.

MS. NEUHARDT: Object to the form of that.

Q. Have you ever seen the TSA, sir?

A. The agreement?

Q. Yes.

A. No, sir, not read it.

Q. What's the basis of your understanding about what the TSA provides?

A. Mainly because of my -- I have a senior role in finance, so I interact with senior management of the firm, so I have known that the TSA, through my conversations with senior management, what is in place to do. Additionally, per my discussions with Mr. Potenciano, his interactions with the TSA, I
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have learned that.

Additionally, I have spoken to Alex Crepeau, who is managing director in the regulatory ops for Barclays Capital, Inc. Mr. Crepeau was a TSA employee for some period of time and has given me insight into information that the TSA has and what they -- the purpose.

Q. So I understand the basis of your knowledge about the TSA, sir, it's based on conversations with Mr. Potenciano, correct?

A. Correct.

Q. It is based on conversations with Mr. Crepeau, correct?

A. Correct.

Q. Is it based on anything else, sir?

A. And my knowledge of how the TSA operates through my interactions with senior members of Barclays Capital.

Q. Who are they, sir?

A. CFO of the firm, who may be gone at the moment, T.J. Gavenda. Terry Scott, who was COO of the U.S. broker/dealer.

So in other words, when the TSA was in
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place, we were told, whether it be e-mail communication or verbal communication, that at times some of our employees that work for me may have to work with TSA employees on behalf of the trustee.

Q. So in addition to Mr. Crepeau and Mr. Potenciano, your knowledge of the TSA is based on conversations with -- did you say the CFO?

A. Yes.

Q. Who may be gone at the moment?

A. I'm saying conversations would have been with regard to T.J. Gavenda, who was CFO when this first came into play, as well as Terry Scott, who would have been the COO of finance.

Q. Other than these four people, sir, and the conversations you had with them, is your knowledge such as it is about the TSA based on anything else?

MS. NEUHARDT: Objection to form.

A. Such as -- I don't interact, I am not -- I have never been instructed to work with the trustee or employees of the TSA, so that would be the only interaction that I have.

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Q. Sir, so when in your declaration, you refer to your personal knowledge of the TSA, you were referring to conversations with these four people, correct?

MS. NEUHARDT: Objection, asked and answered, and it mischaracterizes his testimony.

Q. You can answer, sir.

A. Based on my personal knowledge of our firm's business, and because of the conversations I had with individuals in my firm who have intimate knowledge of that. I mean, there are not a lot of employees who interact with the TSA, from my understanding. And within my team, I only have one individual that has, to my knowledge, been asked to do that.

Q. Who is that, sir?

A. Joel Potenciano.

Q. And he is one of those employees who you just testified had intimate knowledge of the workings of the TSA?

A. Yes, he had -- he has had interactions with the TSA.

Q. Would you agree that each of those

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four employees have more knowledge about the TSA than you do, sir?

MS. NEUHARDT: Objection to form.

A. I would say as far as the structure of the TSA, I have the same knowledge as they do. As far as what the TSA is working on, I have no intimate knowledge of what they do. They would -- those individuals, at least Mr. Crepeau and Mr. Potenciano, would have more insight.

Q. What do you mean when you say structure of the TSA, sir?

A. That they are ring-fenced employees and they are at the direction of the trustee and not employees that -- for instance, they don't work for me, they don't work for Barclays Capital, Inc., U.S. broker/dealer.

Q. Did you mean anything else when you referenced structure of the TSA, sir?

A. No.

Q. What -- you also mentioned the -- your knowledge of the TSA was based on your personal knowledge of the firm's business. Do you remember telling me that a moment ago?

A. Um-hm.

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Q. What do you mean by that, sir?

A. Meaning my role as a senior member of finance, that I interact with senior members of the firm. I know that the firm has -- while I was not involved in the sale of Lehman, certainly I am aware of the transaction, some of the high-level components, and that the TSA was put in place as a result of that acquisition or transaction.

Q. So your knowledge of the TSA that is based on your personal knowledge of the firm's business extends to the existence, your knowledge about the existence of the TSA, correct?

A. Yes.

MS. NEUHARDT: Objection, form.

Q. Does it extend any further?

MS. NEUHARDT: Objection to form.

A. Like what -- I'm -- I don't understand. Any further than -- I don't interact with the TSA. I am not permitted and I don't have access to them.

Q. Sir, do you purport to have any knowledge about what data --

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MS. NEUHARDT: About what data?

Q. About what data Barclays is permitted under the TSA to access?

A. I know, based on the business that we acquired, that we have access to acquired assets or businesses that are on, for example, ADP224, which is one of the main systems that we used to perform a reserve calculation today on behalf of the acquired businesses, that Barclays acquired.

How that works is that there is ADP012, which happens to be the system that houses or contains 100 percent of the LBI business, and that is what our team does not have access to.

Q. My question is a little different, sir. I will read it again to you.

Do you purport to have any knowledge about what data Barclays is permitted to access under the TSA?

MS. NEUHARDT: Objection to form.

A. Through my -- I have not read the TSA agreement. I have spoken to Mr. Crepeau and understand that we have access to the businesses, assets only that we acquired, and I

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confirmed that with my team as far as the access that they had.

Q. Did Mr. Crepeau tell you that this access related in any way to the TSA?

A. My interaction with Mr. Crepeau, who was a TSA employee, explained that, through his operational knowledge, that the information relative to systems that contain LBI information or information as contained -- as access of the trustee -- excuse me, that the trustee has access to.

Q. And did he tell you whether or not -- withdrawn.

If I understand your testimony, sir, Mr. Crepeau told you that Barclays has access to only certain of the data relating to LBI's broker/dealer, correct?

MS. NEUHARDT: Objection to form.

A. Mr. Potenciano, Mr. Crepeau, and through my own knowledge, understand that we have access only to the -- Barclays has access only to the businesses or assets that it acquired. Those assets and businesses are ring-fenced, if you will, in an ADP system

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<p>1 MARTINI</p> <p>2 called 224, which my team accesses on a weekly</p> <p>3 basis to do customer reserves.</p> <p>4 Speaking to my team as well, they</p> <p>5 don't have the ability to access any information</p> <p>6 that was contained in the other businesses of</p> <p>7 LBI.</p> <p>8 Q. Which other businesses, sir?</p> <p>9 A. Whatever was not acquired by Barclays</p> <p>10 Capital. Otherwise, I was not involved in the</p> <p>11 sale or transaction, I can't speak to which</p> <p>12 assets were and were not, but I do know from my</p> <p>13 understanding of the transaction in the early</p> <p>14 days that Barclays did not acquire 100 percent.</p> <p>15 It was an asset purchase.</p> <p>16 Q. Do you have any understanding, sir, of</p> <p>17 what parts of the LBI business Barclays did and</p> <p>18 did not acquire?</p> <p>19 A. I would say that's not my area of</p> <p>20 expertise.</p> <p>21 Q. OK. With that caveat in mind, sir,</p> <p>22 can you answer my question?</p> <p>23 A. I think the wealth business was</p> <p>24 acquired, but as far as any more intricate</p> <p>25 knowledge for specific businesses, I can't speak</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 MARTINI</p> <p>2 to.</p> <p>3 Q. So the full extent of your knowledge</p> <p>4 about what Barclays did and did not acquire</p> <p>5 relating to LBI is Barclays acquired the wealth</p> <p>6 business, correct?</p> <p>7 MS. NEUHARDT: Objection to form.</p> <p>8 A. I think initially I have said that</p> <p>9 they have not -- they have not acquired 100</p> <p>10 percent of the business. One of the major</p> <p>11 components of the businesses and assets we</p> <p>12 acquired was the wealth business. And I'm</p> <p>13 speaking from a 15-3-3 perspective -- 15c3-3</p> <p>14 perspective.</p> <p>15 Q. We can call it the customer reserve</p> <p>16 perspective, if that's easier.</p> <p>17 A. That's easier.</p> <p>18 Q. So I understand you're not an expert</p> <p>19 on it, sir, and I'm not trying to make you into</p> <p>20 an expert. I am just trying to understand what</p> <p>21 it is you know and what you don't know.</p> <p>22 A. OK.</p> <p>23 Q. So it is your understanding, sir, that</p> <p>24 Barclays acquired the wealth business from LBI;</p> <p>25 is that correct?</p> <p>TSG Reporting - Worldwide 877-702-9580</p>
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<p>1 MARTINI</p> <p>2 A. That is my understanding.</p> <p>3 Q. And was that also known as the PIM,</p> <p>4 P-I-M, business when it was at LBI? Is that</p> <p>5 correct?</p> <p>6 MS. NEUHARDT: Objection, form.</p> <p>7 A. Correct.</p> <p>8 Q. And other than that, you don't know</p> <p>9 one way or the other whether Barclays acquired</p> <p>10 any other part of LBI's business, correct?</p> <p>11 MS. NEUHARDT: Objection, form.</p> <p>12 A. I was not involved in the sale.</p> <p>13 Q. That's fine, I understand that, sir, I</p> <p>14 just need an answer to my question.</p> <p>15 A. Yeah, I don't know the intricate</p> <p>16 details of what was acquired and not acquired.</p> <p>17 Q. I am not asking about the intricate</p> <p>18 details. I am just asking you what you know</p> <p>19 about what Barclays acquired and what Barclays</p> <p>20 did not acquire from LBI.</p> <p>21 A. I do not know the specific businesses</p> <p>22 that were acquired and not acquired.</p> <p>23 Q. Do you know, sir, whether there were</p> <p>24 any businesses or data that Barclays did not</p> <p>25 acquire from LBI that would have fed into LBI's</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 MARTINI</p> <p>2 customer reserve calculation as of September 19,</p> <p>3 2008?</p> <p>4 MS. NEUHARDT: Objection to form.</p> <p>5 A. Yeah, I don't understand that</p> <p>6 question, sorry.</p> <p>7 Q. Well, I'm -- we can look at your</p> <p>8 declaration, sir, but it is your testimony, is</p> <p>9 it not, sir, looking particularly in</p> <p>10 paragraph 7, that Barclays is not entitled to</p> <p>11 access all of the relevant information on LBI's</p> <p>12 systems as of on or about September 17, 2008, or</p> <p>13 September 19, 2008, with regard to the 15c3-3</p> <p>14 reserve calculations?</p> <p>15 MS. NEUHARDT: There is no question.</p> <p>16 Oh, is it your testimony, OK.</p> <p>17 Q. Is that your testimony, sir?</p> <p>18 A. That is what I read.</p> <p>19 Q. Do you believe that's accurate, sir?</p> <p>20 A. Yes, I believe that's accurate.</p> <p>21 Q. Can you tell me which information on</p> <p>22 LBI's systems Barclays doesn't have access to?</p> <p>23 MS. NEUHARDT: Objection, form.</p> <p>24 Q. That you referred to in this sentence?</p> <p>25 You said, "Barclays is not entitled to access</p> <p>TSG Reporting - Worldwide 877-702-9580</p>

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all of the relevant information on LBI's systems," as of those two dates in September, with regard to the 15c3-3 reserve calculations. Do you see that?

A. Yes.

Q. When you say all the relevant information that Barclays is not entitled to access to, what are you talking about?

A. So in order to do a 3-3 calculation, we need information, all information for the firm, not just the customer assets. I know that there were systems, three major systems that went into the LBI reserve comp, ITS, MTS and ADP. From talking to my team and others, Alex Crepeau, Barclays did not have access to the data contained in those systems.

Q. So you understand, sir, that you said at the start of your declaration, "I make this declaration on my personal knowledge," right? What do you understand that to mean, sir?

MS. NEUHARDT: Objection to form.

A. Personal knowledge means that of my position in the firm, understanding of the business and my discussions with people on my TSG Reporting - Worldwide 877-702-9580

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team and Alex Crepeau.

Q. And your statement that Barclays is not entitled to access all of the relevant information on LBI's systems as of those two dates with regard to the 15c3-3 reserve calculations is based on your conversation with Mr. Crepeau, correct?

MS. NEUHARDT: Objection, form.

Q. Yes?

A. Yes.

Q. What else is it based on?

A. Conversations with Mr. Potenciano.

Q. Anything else?

A. And the fact that I know assets that were acquired sit within ADP224, and that is what my team that does a 3-3 calculation on a weekly basis utilizes. So I know that legacy Barclays employees do not have access to Lehman's systems, and that Mr. Potenciano, any access that he had was at some point revoked by the trustee.

Q. Are you able to testify, sir, as to the nature of the data that Barclays is not entitled to access as you reference in this TSG Reporting - Worldwide 877-702-9580

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sentence?

MS. NEUHARDT: Objection. You spent a good half hour this morning going over his experience on 15c3-3 calculations. This has been asked and answered and answered over and over.

MR. OXFORD: Do you have an objection to form?

MS. NEUHARDT: That too. But also asked and answered.

A. So to do a reserve computation, I need to look at the entire data in sub ledgers of the broker/dealer to come up with the reserve calculation. We take all the population of information; it is a population test. The population has to be correct for the calculation to be correct. You need the full population to determine which assets belong in the customer reserve account.

Q. And you know, sir, that there is data to which Barclays doesn't have access that it would need to rerun the LBI c3 calculation, but you don't know specifically what that data is; is that correct?

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MS. NEUHARDT: Objection, form.

A. So the data would be what is contained in ITS, MTS and ADP. So that would include customer receivable, payables, fail accounts, stock records, subsidiary ledgers, anything that represents the books and records of the broker/dealer, on their books and records.

Q. It is your testimony that there is data within ITS and MTS that Barclays doesn't have access to?

A. Yes.

Q. You mentioned Mr. Potenciano at one point had access to some data and that access was revoked by the trustee. Do you remember telling me that a minute ago?

A. Yes.

Q. Can you explain what you meant by that?

A. He was a Lehman employee, so he had access at some point to those systems.

Q. Right. I understand that, sir. I'm not asking --

MS. NEUHARDT: He is not done with his answer.

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<p>1 MARTINI</p> <p>2 Q. I don't mean to interrupt you, but</p> <p>3 just so we can clarify the question, I am not</p> <p>4 asking about the time when Mr. Potenciano was</p> <p>5 employed by Lehman. Of course when he was</p> <p>6 employed by Lehman he had access to the data. I</p> <p>7 am asking what you meant when you said that</p> <p>8 Mr. Potenciano had access to certain LBI data</p> <p>9 and that access was revoked.</p> <p>10 A. Mr. Potenciano had log-ins to the</p> <p>11 systems that contained LBI data. At some point</p> <p>12 it was revoked. I don't know that date when it</p> <p>13 was revoked.</p> <p>14 Q. Do you know whether Mr. Potenciano had</p> <p>15 those log-ins after September 22, 2008?</p> <p>16 A. I don't know for certain.</p> <p>17 Q. How is it that you know that those</p> <p>18 log-ins were revoked, sir?</p> <p>19 A. I asked him. I asked Mr. Potenciano,</p> <p>20 "Do you have access to those systems, ADP, ITS,</p> <p>21 MTS?"</p> <p>22 He says, "No."</p> <p>23 I said, "How do you know that?"</p> <p>24 He says, "Because my log-ins were</p> <p>25 revoked," and he doesn't remember when they were</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 MARTINI</p> <p>2 revoked.</p> <p>3 Q. Does he remember what year they were</p> <p>4 revoked?</p> <p>5 A. I didn't ask him. Would it be safe to</p> <p>6 say that at some point they came over? I would</p> <p>7 say yes. I could -- at some point through 2008,</p> <p>8 did he have access? I'm sure they didn't get</p> <p>9 cut off immediately, but I don't know when it</p> <p>10 was cut off.</p> <p>11 MS. NEUHARDT: When you get to a good</p> <p>12 stopping point, I could use a break.</p> <p>13 MR. OXFORD: We can take a few minutes</p> <p>14 now if you like.</p> <p>15 MS. NEUHARDT: Now?</p> <p>16 MR. OXFORD: Sure.</p> <p>17 MS. NEUHARDT: Great.</p> <p>18 (Recess)</p> <p>19 BY MR. OXFORD:</p> <p>20 Q. Mr. Martini, do you know whether or</p> <p>21 not Mr. Potenciano has access to any -- at any</p> <p>22 time after he began employment with Barclays,</p> <p>23 did he have any access to any shared drives onto</p> <p>24 which LBI data was downloaded?</p> <p>25 A. I don't know for certain.</p> <p>TSG Reporting - Worldwide 877-702-9580</p>
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<p>1 MARTINI</p> <p>2 Q. You qualified that last sentence "for</p> <p>3 certain." Do you have any idea one way or the</p> <p>4 other?</p> <p>5 A. I don't know.</p> <p>6 Q. Have we exhausted your recollection of</p> <p>7 the conversations you had with Mr. Potenciano in</p> <p>8 connection with the preparation for this</p> <p>9 deposition?</p> <p>10 A. Just I would have asked him what he</p> <p>11 worked on with Mr. Burke. So in other words,</p> <p>12 not worked on but what was his interaction.</p> <p>13 Q. In what context were you asking --</p> <p>14 withdrawn.</p> <p>15 Were you asking him about his</p> <p>16 interaction with Bill Burke in a particular time</p> <p>17 frame?</p> <p>18 A. Just in general, when he was asked to</p> <p>19 work for the trustee, my question was, what were</p> <p>20 you being asked to do? It was because he was a</p> <p>21 mechanical type person, that he would do some of</p> <p>22 the mechanical work for Mr. Burke.</p> <p>23 Q. Did you have any other discussions</p> <p>24 with Mr. Potenciano in connection with either in</p> <p>25 preparation for the deposition or your</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 MARTINI</p> <p>2 declaration?</p> <p>3 A. No.</p> <p>4 Q. What about Mr. Crepeau, have we</p> <p>5 exhausted your recollection of the conversations</p> <p>6 you had with Mr. Crepeau in connection with</p> <p>7 either your deposition or your declaration?</p> <p>8 A. Yes. Mr. Crepeau, the conversations</p> <p>9 with him were, number one, what the TSA was</p> <p>10 working on, working on reconciliations over a</p> <p>11 two-year period; regarding access, did they have</p> <p>12 access to all the information, and did he have</p> <p>13 access to anything that was MTS, ITS or ADP.</p> <p>14 Q. Mr. Crepeau was or was not a TSA</p> <p>15 employee?</p> <p>16 A. He was at one point.</p> <p>17 Q. Do you know the time frame under which</p> <p>18 he was working for the TSA?</p> <p>19 A. No. Originally he was with TSA. He</p> <p>20 came to Barclays at some point later. I'm not</p> <p>21 sure when. It was at some point in '09. I</p> <p>22 don't know when exactly.</p> <p>23 Q. Mr. Crepeau told you, when you say</p> <p>24 number one, what the TSA was working on?</p> <p>25 A. Number one, what was the nature of the</p> <p>TSG Reporting - Worldwide 877-702-9580</p>

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<p>1 MARTINI</p> <p>2 TSA, was reconciliations of the books and</p> <p>3 records. Access, confirming my understanding</p> <p>4 that TSA had access to all the LBI data, and</p> <p>5 then additionally, did he have access currently</p> <p>6 to any of the ITS, MTS or ADP data that was LBI.</p> <p>7 Q. When did you have the conversation</p> <p>8 with Mr. Crepeau?</p> <p>9 A. Before I -- in the time leading up to</p> <p>10 the April 5 declaration.</p> <p>11 Q. Did you talk to him in preparation for</p> <p>12 your deposition?</p> <p>13 A. I spoke to Mr. Crepeau, yes.</p> <p>14 Q. When did you talk to him?</p> <p>15 A. This morning.</p> <p>16 Q. Do you have any notes of the</p> <p>17 conversations you had with any of the</p> <p>18 individuals you spoke to in connection with</p> <p>19 either your deposition or your declaration?</p> <p>20 A. No. I mean my conversations were</p> <p>21 actually quite short. It was more of, you know,</p> <p>22 confirmation of the information that I said</p> <p>23 initially, my knowledge of the firm, what I</p> <p>24 would have known. It was more along</p> <p>25 confirmation as to access, things like that. So</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 MARTINI</p> <p>2 my conversations were very short.</p> <p>3 Q. You mentioned that Mr. Crepeau told</p> <p>4 you that something was a two-year project with</p> <p>5 the TSA. Can you expand a little on that?</p> <p>6 A. So in the declaration which talks</p> <p>7 about when Mr. McIsaac's affidavit about 3-3</p> <p>8 calculations, I'm saying to run a 3-3</p> <p>9 calculation, you need the data. Data needs to</p> <p>10 be correct. The books and records,</p> <p>11 understanding that the books and records had to</p> <p>12 be reconciled, possibly third parties. I'm not</p> <p>13 sure of all the details.</p> <p>14 But number one, it's getting the</p> <p>15 population correct, reconciled, getting the</p> <p>16 system, access to the systems, and then finally</p> <p>17 access to the appropriate people who have</p> <p>18 knowledge of Lehman's business in order to do a</p> <p>19 3-3 calculation.</p> <p>20 Q. Is it your testimony, sir, that the</p> <p>21 TSA has undertaken all of the activities you</p> <p>22 have just told me about?</p> <p>23 MS. NEUHARDT: Objection to form.</p> <p>24 A. Meaning --</p> <p>25 Q. Your last answer, sir, when you said</p> <p>TSG Reporting - Worldwide 877-702-9580</p>
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<p>1 MARTINI</p> <p>2 that books and records need to be reconciled,</p> <p>3 possibly with third-party data, and that access</p> <p>4 to appropriate people who have knowledge of</p> <p>5 Lehman's business would need to be obtained in</p> <p>6 order to do a c3 calculation; is that what you</p> <p>7 told me?</p> <p>8 A. My understanding and knowledge, that's</p> <p>9 what TSA was doing, has been doing,</p> <p>10 reconciliations, as well as they contain the one</p> <p>11 most single most important person to perform a</p> <p>12 3-3 calculation of LBI.</p> <p>13 Q. And who is that person, sir?</p> <p>14 A. Bill Burke.</p> <p>15 Q. How is it that you know that he is the</p> <p>16 single most important person for doing a 3-3</p> <p>17 calculation of LBI?</p> <p>18 A. I know Bill Burke's position in the</p> <p>19 firm. I've known him through the industry for a</p> <p>20 long period of time. The head of Lehman's reg.</p> <p>21 team, Tony Stucchio, does not work at the firm</p> <p>22 anymore, moved on.</p> <p>23 Bill Burke ran the 3-3 calculation.</p> <p>24 My discussions, knowledge with Mr. Potenciano</p> <p>25 and my knowledge of how Lehman worked, my years,</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 MARTINI</p> <p>2 the short period I worked at the Exchange,</p> <p>3 interacted with him as well in that role, and</p> <p>4 that my knowledge of Mr. Potenciano in terms of</p> <p>5 his expertise in terms of 3-3.</p> <p>6 Q. You also had conversations, you said,</p> <p>7 with T.J. Gavenda; is that correct?</p> <p>8 MS. NEUHARDT: Objection to form.</p> <p>9 Q. In preparation for your deposition or</p> <p>10 your declaration?</p> <p>11 A. No.</p> <p>12 Q. You did not?</p> <p>13 A. No conversations, no. My, my comment</p> <p>14 about Mr. Gavenda was that we talked about TSA</p> <p>15 and what they did, as CFO at the time. I would</p> <p>16 have gotten knowledge through him as to what the</p> <p>17 role of the TSA was.</p> <p>18 Q. Is that also true of your</p> <p>19 conversations with Mr. Scott, the COO?</p> <p>20 A. Ms., yeah.</p> <p>21 Q. Ms. Scott. Did you talk to her in</p> <p>22 preparation for your deposition?</p> <p>23 A. No.</p> <p>24 Q. Did you talk to her in preparation for</p> <p>25 your declaration?</p> <p>TSG Reporting - Worldwide 877-702-9580</p>

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A. No.

Q. Did you talk to anybody else in preparation for your -- either your deposition or your declaration?

A. No.

Q. Have you ever -- withdrawn. You mentioned that Bill Burke had a certain reputation in the industry, correct?

A. Yes.

Q. Can you tell me again what the reputation is?

A. Someone who was seen as an expert in SEC rules, 15c3-1, customer reserve and net capital. Excuse me.

Q. Do you know who Daniel McIsaac is?

A. Yes.

Q. And before you reviewed his report, were you familiar with Mr. McIsaac?

A. Yes.

Q. How is it you were familiar with Mr. McIsaac?

A. I know where he works, know his role in past firms and know his role through the SIFMA Capital Committee. S-I-F-M-A.

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Q. Have you ever met Mr. McIsaac?

A. Yes.

MR. OXFORD: Off the record.

(Discussion held off the record)

BY MR. OXFORD:

Q. You said you met Mr. McIsaac before you read his affidavit?

A. Yeah. I have met him previously. I know him through the industry.

Q. Mr. McIsaac is someone with considerable experience in the industry; is that correct?

MS. NEUHARDT: Objection to form.

A. There are many people with considerable industry experience, including myself. Burke, yes, he is one of them as well.

Q. Does Mr. McIsaac have a reputation in the industry, sir?

A. He does.

Q. What is that reputation?

A. I think his name is -- again, if you are on the SIFMA Capital Committee, you are running the reg. teams at a major broker/dealer. So with that comes a reputation of you're

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knowledgeable.

Q. So you said Mr. Burke you considered to be an expert in the industry and in particular in SEC rules, including 15c3-3? Do you remember telling me that?

A. Um-hm.

Q. Would you also consider from your experience in the industry that Mr. McIsaac was similarly an expert in SEC Rule 15c3-3?

MS. NEUHARDT: Object to the extent that you are asking him for a legal conclusion on whether or not either Mr. Burke or Mr. McIsaac should be qualified as experts in this litigation.

Otherwise, you can answer.

A. First of all, Mr. McIsaac held a higher position. So I don't know -- he was a CFO, if I am not mistaken. So I don't know whether he has as intimate knowledge as someone like Bill Burke who manages the day-to-day 3-3 calculations.

I'm sure at some point in Mr. McIsaac's career, he managed a 3-3 calculation. I have nothing to base an opinion

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that he does not have expertise in 3-3.

Q. And before your counsel entered her speaking objection, I had asked you a question which was as follows: Would you also consider from your experience in the industry that Mr. McIsaac is qualified as an expert in the interpretation of Rule 15c3-3?

MS. NEUHARDT: Same objection.

A. I have not discussed ever a 15c3 issue with Mr. McIsaac, but I know him in the industry, know he holds that high position and has run reg. teams most of his career, so I have nothing that would make me believe he does not have expertise in that area.

Q. Have you ever spoken to a gentleman by the name of Peter Vinella?

A. No.

Q. Do you understand that Mr. Vinella is someone who has been retained by Barclays as an expert in this litigation?

MS. NEUHARDT: Objection to form.

A. I know his name is involved in this proceeding, yes. I don't know what role he has.

Q. Other than seeing his name referenced

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<p>1 MARTINI</p> <p>2 in documents submitted by Mr. McIsaac, do you</p> <p>3 have any awareness of Mr. Vinella's role in this</p> <p>4 litigation?</p> <p>5 A. No.</p> <p>6 Q. When you joined Barclays, sir, you</p> <p>7 were associate director on the regulatory</p> <p>8 reporting team at Barclays Capital, correct?</p> <p>9 A. Correct.</p> <p>10 Q. And that was a position you held</p> <p>11 between August 2007 and March 1, 2009, correct?</p> <p>12 A. Correct.</p> <p>13 Q. And in March 1, 2009, you were</p> <p>14 promoted, correct?</p> <p>15 A. Correct.</p> <p>16 Q. You were promoted to director of the</p> <p>17 regulatory reporting team at Barclays Capital?</p> <p>18 A. Correct.</p> <p>19 Q. That's the position you hold today,</p> <p>20 correct?</p> <p>21 A. Correct.</p> <p>22 Q. When you were -- withdrawn.</p> <p>23 You were associate director on the</p> <p>24 reg. reporting team at the time that Barclays</p> <p>25 acquired certain assets and/or businesses of</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 MARTINI</p> <p>2 LBI, correct?</p> <p>3 A. Correct.</p> <p>4 Q. That was in September of 2008,</p> <p>5 correct?</p> <p>6 A. Correct.</p> <p>7 Q. Did you have any responsibility in</p> <p>8 September of 2008 for computing out -- sorry,</p> <p>9 Barclays' 15c3-3 reserve requirement?</p> <p>10 A. September of 2008, my role was in</p> <p>11 charge of reg. policy for Barclays Capital, Inc.</p> <p>12 So I would be someone who faced off with the</p> <p>13 business on new products, new businesses, to let</p> <p>14 them know the impact from our net capital and</p> <p>15 customer reserve perspective.</p> <p>16 So I would have to be intimately</p> <p>17 knowledgeable of Barclays' process for net</p> <p>18 capital and customer reserve, but at that time,</p> <p>19 I did not manage the calculations.</p> <p>20 Q. Who did manage the calculations, sir?</p> <p>21 A. At that time, Matthew Huey was in</p> <p>22 charge of reg. for the U.S. for Barclays</p> <p>23 Capital.</p> <p>24 Q. Does he hold the position you hold</p> <p>25 today, sir?</p> <p>TSG Reporting - Worldwide 877-702-9580</p>
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<p>1 MARTINI</p> <p>2 A. The group has been restructured</p> <p>3 subsequent, so his position is actually held by</p> <p>4 someone named Anna Yu, and in the restructuring,</p> <p>5 they then broke off the management of the</p> <p>6 broker/dealer teams and the bank teams. I run</p> <p>7 the broker/dealer team and somebody else runs</p> <p>8 the bank team.</p> <p>9 Q. Do you have any knowledge about</p> <p>10 Barclays' calculation of the -- its 15c3-3</p> <p>11 reserve requirement in September of 2008 and in</p> <p>12 October of 2008, after it had acquired certain</p> <p>13 assets and businesses from LBI?</p> <p>14 MS. NEUHARDT: Objection to form.</p> <p>15 A. Can you explain "knowledge," what that</p> <p>16 means?</p> <p>17 Q. Do you know anything about it?</p> <p>18 A. I mean I'm aware of the reserve</p> <p>19 calculations. I just did not manage them or</p> <p>20 supervise them.</p> <p>21 Q. How is it that you are aware of the</p> <p>22 reserve calculations, sir?</p> <p>23 A. One is done every week, and as a</p> <p>24 manager, senior manager within the team, I would</p> <p>25 still see the reserve calculations.</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 MARTINI</p> <p>2 Q. Do you have any knowledge about how</p> <p>3 that calculation was performed in that time</p> <p>4 period, September, October, 2008?</p> <p>5 MS. NEUHARDT: Objection to form.</p> <p>6 A. My recollection for that period would</p> <p>7 not be really specific as to how they'd do it</p> <p>8 then. If it was as of today, for example, it</p> <p>9 would be a different story.</p> <p>10 Q. Do you -- I take it from your last</p> <p>11 answer, you're now directly responsible for the</p> <p>12 computation of the c3 reserve calculation within</p> <p>13 Barclays Capital?</p> <p>14 A. My current role, I am responsible for</p> <p>15 a reg. policy team for the broker/dealer and for</p> <p>16 all the SEC reporting for the U.S.</p> <p>17 broker/dealer, CFTC reporting. So in that is a</p> <p>18 3-3 calculation. That's one of the aspects. I</p> <p>19 do not manage it. I have a VP who manages it</p> <p>20 and reports to a director who reports to me.</p> <p>21 Q. So it is fair to say, sir, you have</p> <p>22 indirect but managerial or supervisory</p> <p>23 responsibility for Barclays Capital's</p> <p>24 calculation of the customer reserve formula</p> <p>25 today?</p> <p>TSG Reporting - Worldwide 877-702-9580</p>

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<p>1 MARTINI</p> <p>2 A. I have managerial responsibility, but</p> <p>3 I am intimately aware of our processes.</p> <p>4 Barclays is a hands-on place, despite the size.</p> <p>5 Q. Do you know, sir, how Barclays --</p> <p>6 withdrawn.</p> <p>7 Barclays was a smaller broker/dealer</p> <p>8 than LBI prior to September of 2008, correct?</p> <p>9 MS. NEUHARDT: Objection to form.</p> <p>10 A. Smaller in which way?</p> <p>11 Q. Any way, sir.</p> <p>12 A. In terms of balance sheet?</p> <p>13 Q. Any way, sir.</p> <p>14 A. Balance sheet may have been</p> <p>15 comparable. Smaller in terms of number of</p> <p>16 people in the reg. team, yes.</p> <p>17 Q. Do you know one way or the other</p> <p>18 whether the balance sheet of Barclays Capital</p> <p>19 and LBI was comparable in the fall of 2008?</p> <p>20 A. I haven't looked at those for a long</p> <p>21 time, but I believe they were comparable.</p> <p>22 Q. Do you have any understanding, sir, of</p> <p>23 how Barclays Capital managed the integration of</p> <p>24 the LBI customer accounts and assets --</p> <p>25 MS. NEUHARDT: Objection to form.</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 MARTINI</p> <p>2 MR. OXFORD: I hadn't finished.</p> <p>3 MS. NEUHARDT: Sorry.</p> <p>4 Q. -- that it acquired from LBI from a</p> <p>5 15c3-3 reserve perspective?</p> <p>6 MS. NEUHARDT: It's objectionable.</p> <p>7 A. That I don't -- I don't understand the</p> <p>8 question, I'm sorry.</p> <p>9 Q. You understand that Barclays acquired</p> <p>10 certain customers and certain customer assets</p> <p>11 from LBI, correct?</p> <p>12 A. Um-hm, yes.</p> <p>13 Q. You understand, sir, that those</p> <p>14 customers and customer assets would have an</p> <p>15 impact on Barclays' computation of the 15c3-3</p> <p>16 reserve formula, yes?</p> <p>17 A. Correct.</p> <p>18 Q. Do you have any understanding of how</p> <p>19 Barclays managed the integration of those</p> <p>20 customers and customer assets into its</p> <p>21 computation of the c3 formula?</p> <p>22 MS. NEUHARDT: Objection to form.</p> <p>23 A. So if -- are you asking how the assets</p> <p>24 came over from LBI to Barclays?</p> <p>25 Q. No, no.</p> <p>TSG Reporting - Worldwide 877-702-9580</p>
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<p>1 MARTINI</p> <p>2 A. You're asking how the computation is</p> <p>3 now computed for Barclays Capital with the new</p> <p>4 acquired assets?</p> <p>5 Q. I am asking, sir, whether you have any</p> <p>6 information about what steps Barclays took in</p> <p>7 order to manage its 15c3-3 calculations at a</p> <p>8 time when Barclays had acquired a significant</p> <p>9 amount of new customers and a significant amount</p> <p>10 of assets along with those customers.</p> <p>11 MS. NEUHARDT: Objection, form.</p> <p>12 Q. Do you understand the question?</p> <p>13 A. Yeah. So I'll -- the integration</p> <p>14 date, there was many things occurring, so I,</p> <p>15 myself, at that point in time was not managing,</p> <p>16 as I mentioned, the 3-3 calculations. So as far</p> <p>17 as how they integrated everything initially, I</p> <p>18 don't know how they ultimately got to those</p> <p>19 points.</p> <p>20 I do know the Friday after the</p> <p>21 acquisition that we performed a 3-3 calculation</p> <p>22 that would have contained those assets.</p> <p>23 Q. And do you know whether there were any</p> <p>24 difficulties in performing that calculation?</p> <p>25 A. Don't recall the actual details.</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 MARTINI</p> <p>2 Q. Do you know what steps were taken to</p> <p>3 insure that that calculation was correct?</p> <p>4 MS. NEUHARDT: Objection to form.</p> <p>5 A. I don't.</p> <p>6 Q. I meant to ask you about professional</p> <p>7 associations, sir, when I was going through your</p> <p>8 bio, but I forgot. Are you a member of any</p> <p>9 professional associations?</p> <p>10 A. I am a member of the SIFMA Capital</p> <p>11 Committee, and on the Financial Management</p> <p>12 Society Board of SIFMA.</p> <p>13 Q. Do you have a particular role on the</p> <p>14 Capital Committee of SIFMA, sir?</p> <p>15 A. I represent Barclays Capital.</p> <p>16 Q. Other than that, sir, do you have any</p> <p>17 particular role?</p> <p>18 A. No, nobody does. I mean if issues</p> <p>19 come up that will require separate committees, I</p> <p>20 would be involved in that, but that's how the</p> <p>21 committee works.</p> <p>22 Q. Does your work on the Capital</p> <p>23 Committee of SIFMA relate to 15c3-3?</p> <p>24 A. I mean the SIFMA Capital Committee is</p> <p>25 a lobbyist to the regulators, so, you know,</p> <p>TSG Reporting - Worldwide 877-702-9580</p>

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<p>1 MARTINI</p> <p>2 regulators, SEC, FINRA attend those meetings as</p> <p>3 well. So there is a give and take, back and</p> <p>4 forth on regulatory issues, and 3-3 may be an</p> <p>5 issue from time to time.</p> <p>6 Q. Is it an issue that actually has come</p> <p>7 up during your membership of the Capital</p> <p>8 Committee?</p> <p>9 A. I've heard issues around the customer</p> <p>10 reserve, yes, absolutely.</p> <p>11 Q. Do you recall what any of those issues</p> <p>12 were in particular?</p> <p>13 A. Could be regarding potential to change</p> <p>14 the calculation frequency, changes as to the</p> <p>15 haircuts that are applied on a 15c3 calculation,</p> <p>16 3 percent to 1 percent, things along those</p> <p>17 lines. Potential rules that regulators are</p> <p>18 considering. New businesses and the impact of</p> <p>19 3-3.</p> <p>20 Q. How long have you been a member of the</p> <p>21 Capital Committee, sir?</p> <p>22 A. It was, sorry, sometime -- I don't</p> <p>23 remember the exact date -- early 2009, and I was</p> <p>24 appointed to the FSM board of SIFMA, I believe</p> <p>25 it was April or May of this year, 2010.</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 MARTINI</p> <p>2 Q. What's the FSM board of SIFMA?</p> <p>3 A. It is an accounting/regulatory group</p> <p>4 within SIFMA. It looks at new accounting issues</p> <p>5 and has some overlap on the Capital Committee</p> <p>6 with regulatory issues.</p> <p>7 Q. OK. So I have this clear, you're a</p> <p>8 member of the FSM board of SIFMA?</p> <p>9 You're also a member -- sorry, you</p> <p>10 have to say yes or no.</p> <p>11 A. Yes.</p> <p>12 Q. You are also a member of the Capital</p> <p>13 Committee of SIFMA; is that correct?</p> <p>14 A. Correct.</p> <p>15 Q. You have been a member of the Capital</p> <p>16 Committee since early 2009, correct?</p> <p>17 A. Correct.</p> <p>18 Q. And tell me again when you were</p> <p>19 appointed to the FSM board of SIFMA.</p> <p>20 A. Either April or May of 2010.</p> <p>21 Q. I guess I should say congratulations.</p> <p>22 A. None needed.</p> <p>23 Q. More of a curse than a blessing.</p> <p>24 Does your role as a member of the FSM</p> <p>25 board of SIFMA have anything to do with Rule</p> <p>TSG Reporting - Worldwide 877-702-9580</p>
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<p>1 MARTINI</p> <p>2 15c3-3?</p> <p>3 A. Because I have only been to one</p> <p>4 meeting, I would say not to this point.</p> <p>5 Q. You also said you were a member of the</p> <p>6 Financial Management Society of SIPA?</p> <p>7 A. No. That's FMS -- the FMS board of</p> <p>8 SIFMA.</p> <p>9 Q. SIFMA?</p> <p>10 A. And the Capital Committee of SIFMA.</p> <p>11 Q. I understand.</p> <p>12 Do you understand, sir, what SIPA,</p> <p>13 S-I-P-A, stands for?</p> <p>14 A. I don't remember what the A stands</p> <p>15 for. Something related to SIPC, I believe.</p> <p>16 Q. I believe so.</p> <p>17 Do you have any expertise in</p> <p>18 interactions with SIPC?</p> <p>19 A. No.</p> <p>20 Q. Do you have any -- I'll represent that</p> <p>21 SIPA is the Securities Investor Protection Act.</p> <p>22 Does that sound familiar to you?</p> <p>23 A. Yes.</p> <p>24 Q. Do you have any expertise in the</p> <p>25 interpretation of SIPA?</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 MARTINI</p> <p>2 A. No.</p> <p>3 Q. If I could ask you to turn to</p> <p>4 paragraph 3 of your declaration, sir. You see</p> <p>5 that with reference to Mr. McIsaac's rebuttal</p> <p>6 report dated March 14, which is Deposition</p> <p>7 Exhibit 693, you say, "Mr. McIsaac makes four</p> <p>8 assertions, all of which are incorrect."</p> <p>9 A. Correct.</p> <p>10 Q. You see that?</p> <p>11 A. Yes.</p> <p>12 Q. Turning to the first bullet point</p> <p>13 there, sir, you say that "Mr. McIsaac asserts</p> <p>14 after Barclays acquired certain assets of LBI's</p> <p>15 U.S. broker/dealer business in September of</p> <p>16 2008, Barclays took control of all LBI systems</p> <p>17 stored information necessary to rerun the SEC</p> <p>18 Rule 15c3-3 reserve calculation as of</p> <p>19 September 19, 2008."</p> <p>20 Do you see that?</p> <p>21 A. Yes.</p> <p>22 Q. What do you mean by the term "rerun"</p> <p>23 here, sir?</p> <p>24 A. Calculate.</p> <p>25 Q. And what steps would be involved in</p> <p>TSG Reporting - Worldwide 877-702-9580</p>

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calculating or rerunning the calculation as you meant it in that sentence?

A. What has to happen is first Barclays Capital, someone on my team would need access to the data. Secondly, they would need a complete population of reconciled books and records, so that the information going in is accurate so that the output can be accurate.

And then within the subset of that data, and I'm talking of specifically the ADP, MTS, ITS, stock records, trial balances, subsidiary ledgers, whatever will be required to perform a 15c3 calc.

Q. Anything else, sir?

A. In terms of --

Q. In terms of rerunning the calculations, what would be needed by Barclays?

MS. NEUHARDT: Objection, form.

A. Barclays would need a full picture of the firm's books and records and access to their stock record allocations and access to individuals in operations, individuals' knowledge of Lehman's business, so that we can interpret the information properly for the

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reserve computation to be done.

Q. You mentioned that Barclays would need a complete population, reconciled books and records. Do you remember telling me that a minute ago?

A. Yes.

Q. What do you mean by reconciled books and records?

A. My understanding, I've not worked at Lehman, but my understanding was that they may have issues with their fail ledgers, bank loan ledgers, things that would potentially give you the impression that the information that feeds into the allocation may not be entirely correct or accurate.

Q. What's the basis for that understanding, sir?

A. Discussions again with individuals that have worked at Lehman Brothers. Alex Crepeau who is intimately aware of the firm as a senior operations person. And 15c3-3 is an operational intensive calculation.

Q. And any basis for the testimony you have just given other than a conversation with

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Mr. Crepeau?

MS. NEUHARDT: Objection, form.

A. I was not a legacy Lehman employee, so I can't speak to the order of their books and records.

Q. OK, I understand that. And I appreciate that, sir. I think I do have a picture of what your role was. I'm just seeking to understand -- when you testify, I need to understand how it is that you can testify.

Can you turn to the McIsaac report, Exhibit 693, please. In particular, paragraph 31. Do you have that there, sir?

A. Yes.

Q. You should feel free of course to read the whole thing. I'm going to direct your attention to the last three lines, sir. Let me know when you have had a chance to review that.

A. OK.

Q. Thank you.

Turning to the third last line that begins, "the trustee's professionals." Do you have that, sir?

A. Yes.

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Q. Mr. McIsaac writes, "The trustee's professionals did not, as Mr. Vinella suggests, perform an analysis of possible errors that would have increased the reserve requirement and deliberately failed to perform a similar analysis of possible errors that would have decreased the reserve requirement, nor were they in a position to do so."

Do you see that?

A. Yes.

Q. He goes on to say, "Performing such analysis would require the trustee's professional to review and verify every line item included in the reserve calculation, correct any erroneous entries and then rerun the reserve calculation to gauge the effect of each correction. As noted below, this would not as a practical matter be cost effective or possible to complete."

Do you see that?

A. I do.

Q. Do you agree with the last two sentences of paragraph 31 of Mr. McIsaac's report?

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MS. NEUHARDT: Objection.

A. Yeah, I can't answer the -- performing -- you are saying performing such analysis will require the trustee's professionals to review, verify and rely on --

Q. Um-hm.

A. I agree with that.

Q. So we have a clear record, you agree with Mr. McIsaac's sentence which is the penultimate sentence of paragraph 31, that performing such an analysis would require the trustee's professionals to review and verify every line item included in the reserve calculation, correct any erroneous entries and then rerun the reserve calculation to gauge the effect of each correction?

A. Right. In order to do a reserve calculation, that's what you would have to do.

Q. Is that analysis, including reviewing and verifying every line item in the reserve calculation, something that is done routinely in the industry on a week-to-week basis when the reserve calculation is computed?

A. On a week --

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MS. NEUHARDT: Objection, form.

A. On a week-to-week basis, the reserve team that does the calculation is dependent on the internal controls of the firm's books and records. So if the books and records are accurate, the firm would not do that.

If the firm felt it had something incorrect systematic with its books and records, then they would have to do that if they wanted an accurate calculation, in my opinion.

Q. Do you have any information one way or the other, sir, as to whether or not LBI believed that there was something systematically incorrect with its books and records in the week beginning September 15 of 2008?

MS. NEUHARDT: Objection to form.

A. Because I was not an employee, I can't speak to the specifics, but my discussions with Mr. Crepeau, my interactions with him tell me that they had some issues, most notably bank balances and fail balances.

Q. And specifically what did Mr. Crepeau tell you about those issues?

A. He said that there was activity

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happening and that got the sense that the firm lost control of the books and records.

Q. When did the firm lose control of its books and records according to what Mr. Crepeau told you?

A. It wasn't specific to a date.

Q. Generally when did he say?

A. In the week or so leading up to bankruptcy.

Q. Back to Mr. McIsaac's declaration. In paragraph 32, he says, "Even if the trustee had unlimited access to LBI's systems and former" --

MS. NEUHARDT: Where are you? I am sorry.

MR. OXFORD: 32. Do you have it, Amy?

MS. NEUHARDT: Um-hm.

Q. Paragraph 32, Mr. McIsaac says, "Even if the trustee had unlimited access to LBI's systems and former LBI employees, rerunning the reserve calculation as of September 19th would be a substantial undertaking that would require many months, significant funds and a large number of knowledgeable personnel to complete."

Do you see that, sir?

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A. Yes.

Q. Do you agree with that sentence?

A. Having not intimate knowledge of Lehman's books and records, I can't disagree or agree with that. But I do know at least through my discussions with Mr. Crepeau that my understanding is that was what was occurring, was over the last couple of years with the TSA, it was reconciling books and records.

Q. When did you have that conversation with Mr. Crepeau?

A. In the time leading up to my declaration.

Q. In the spring of 2010?

A. Yeah, but additionally as a member of Barclays Capital, I think there are many employees that work at Lehman that are Barclays Capital employees working for not TSA but Barclays Capital, Inc., the U.S. broker/dealer. It seems to have been common knowledge that that was happening in TSA and what was the state of the books and records of Lehman Brothers.

Q. And did Mr. Crepeau tell you that this effort that he said was being undertaken by the

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<p style="text-align: right;">Page 82</p> <p>1 MARTINI</p> <p>2 TSA to reconcile the books and records of</p> <p>3 Lehman, did he ever tell you that was complete?</p> <p>4 A. He did not.</p> <p>5 Q. Did he tell you it was a significant</p> <p>6 undertaking?</p> <p>7 MS. NEUHARDT: Objection to form.</p> <p>8 A. He didn't say that. He just said -- I</p> <p>9 do believe he said he is not sure that they are</p> <p>10 done or something along those lines.</p> <p>11 Q. Did he tell you that it was taking a</p> <p>12 long time?</p> <p>13 A. You could imply that from the</p> <p>14 conversation, that it has been taking a long</p> <p>15 time.</p> <p>16 Q. I'm not asking if I can imply it, sir.</p> <p>17 I am asking if you --</p> <p>18 A. I would imply that from the</p> <p>19 discussions.</p> <p>20 Q. Did you also learn from Mr. Crepeau</p> <p>21 that a substantial number of individuals are</p> <p>22 involved in TSA's work to reconcile the books</p> <p>23 and records of LBI?</p> <p>24 MS. NEUHARDT: Objection to form.</p> <p>25 A. Never really spoke about number of</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p style="text-align: right;">Page 83</p> <p>1 MARTINI</p> <p>2 people. I don't know.</p> <p>3 Q. This is part of the common knowledge</p> <p>4 that you testified about earlier on, that there</p> <p>5 are --</p> <p>6 MS. NEUHARDT: Objection to form.</p> <p>7 MR. OXFORD: Please, Amy.</p> <p>8 MS. NEUHARDT: I am objecting to form.</p> <p>9 It is not a speaking objection.</p> <p>10 MR. OXFORD: I understand, but if you</p> <p>11 can wait until I finish, then we will have a</p> <p>12 clearer record.</p> <p>13 MS. NEUHARDT: OK. I will still</p> <p>14 object, though.</p> <p>15 Q. You remember you testified earlier,</p> <p>16 sir, that there was common knowledge within</p> <p>17 Barclays about some of the work that was being</p> <p>18 conducted by the TSA, sir? Do you remember</p> <p>19 telling me that?</p> <p>20 A. Common knowledge about what the</p> <p>21 trustee was doing, TSA was doing, working on</p> <p>22 reconciliations of books and records for</p> <p>23 whatever date, September 19, yes.</p> <p>24 Q. And was it also common knowledge that</p> <p>25 there was a substantial number of people</p> <p>TSG Reporting - Worldwide 877-702-9580</p>
<p style="text-align: right;">Page 84</p> <p>1 MARTINI</p> <p>2 involved in this effort?</p> <p>3 MS. NEUHARDT: Objection to form.</p> <p>4 A. I would say that there is -- I would</p> <p>5 imply from the discussions that there were quite</p> <p>6 a few people, I don't know how many, that were</p> <p>7 involved in that effort. I don't know how many</p> <p>8 employees were working with the TSA.</p> <p>9 Q. Continuing on with paragraph 32,</p> <p>10 Mr. McIsaac says, "As a threshold matter, all of</p> <p>11 LBI's books and records as of September 19, 2008</p> <p>12 would have to be reviewed and reconciled, a</p> <p>13 process that would itself take months to</p> <p>14 accomplish."</p> <p>15 Do you have any reason to agree or</p> <p>16 disagree with Mr. McIsaac in that sentence?</p> <p>17 MS. NEUHARDT: Objection to form.</p> <p>18 A. I would have no reason to agree or</p> <p>19 disagree.</p> <p>20 Q. Next sentence. "At that point</p> <p>21 personnel would need to modify the information</p> <p>22 in the allocations in LBI's legacy systems</p> <p>23 manually, or in the likely event that the legacy</p> <p>24 system could not be modified manually,</p> <p>25 reconstruct those systems, including all of the</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p style="text-align: right;">Page 85</p> <p>1 MARTINI</p> <p>2 accounts, balances and codings from the ground</p> <p>3 up."</p> <p>4 Do you see that?</p> <p>5 A. Yes.</p> <p>6 Q. Do you have any reason to agree or</p> <p>7 disagree with Mr. McIsaac there?</p> <p>8 MS. NEUHARDT: Objection to form.</p> <p>9 A. To my knowledge of 3-3 calculations,</p> <p>10 if the data isn't correct, and you have</p> <p>11 adjustments, you have to run those adjustments</p> <p>12 through. Whether that means manually or whether</p> <p>13 you have the ability to do that systematically,</p> <p>14 I don't know Lehman's process of how they would</p> <p>15 do it.</p> <p>16 Q. You don't know that LBI's legacy</p> <p>17 systems don't allow a user to update stock</p> <p>18 record information as of a date in the past?</p> <p>19 MS. NEUHARDT: Objection, form.</p> <p>20 A. I don't know intimately how their</p> <p>21 allocation system works. I can only speak how a</p> <p>22 firm like Barclays works, is that we have the</p> <p>23 ability to change our allocation for</p> <p>24 adjustments. We have an automated solution to</p> <p>25 do that. Most large firms have the ability to</p> <p>TSG Reporting - Worldwide 877-702-9580</p>

<p style="text-align: right;">Page 86</p> <p>1 MARTINI</p> <p>2 do that.</p> <p>3 Q. But you don't know whether or not the</p> <p>4 legacy Lehman systems have that ability?</p> <p>5 A. No. I don't have intimate knowledge</p> <p>6 of how that works.</p> <p>7 Q. Do you agree that if there is no</p> <p>8 ability to update stock record information in</p> <p>9 legacy LBI systems, it would be necessary to</p> <p>10 construct a database that would mimic the stock</p> <p>11 records in the legacy systems?</p> <p>12 MS. NEUHARDT: Objection, form.</p> <p>13 A. It seems logical that that would be</p> <p>14 the case.</p> <p>15 Q. Given the size of LBI's business, that</p> <p>16 would involve recreating the accounts, balances</p> <p>17 and coding for tens of thousands of CUSIPs?</p> <p>18 MS. NEUHARDT: Objection to form.</p> <p>19 A. I'm not sure of that magnitude. I</p> <p>20 have no basis to comment on that.</p> <p>21 Q. You have no basis to think that that's</p> <p>22 incorrect, do you, sir?</p> <p>23 MS. NEUHARDT: Objection, form.</p> <p>24 A. No.</p> <p>25 Q. Do you agree that recreating the</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p style="text-align: right;">Page 87</p> <p>1 MARTINI</p> <p>2 codings and balances for that many CUSIPs would</p> <p>3 be a significant undertaking?</p> <p>4 MS. NEUHARDT: Objection, form.</p> <p>5 A. It sounds that way. Sounds like it</p> <p>6 would be significant. If that is, in fact, what</p> <p>7 the situation is.</p> <p>8 Q. Would you agree it could be</p> <p>9 time-consuming?</p> <p>10 MS. NEUHARDT: Objection to form.</p> <p>11 A. It could. Could be.</p> <p>12 Q. Do you agree that the stock record</p> <p>13 information for each CUSIP would then have to be</p> <p>14 reconciled against custodian records?</p> <p>15 MS. NEUHARDT: Objection, form.</p> <p>16 A. Again, it would depend on exactly, you</p> <p>17 know, what is incorrect. But normally, that is</p> <p>18 the process that a broker/dealer has. They have</p> <p>19 that in their control process, the books and</p> <p>20 records tie to third-party statements.</p> <p>21 Q. Do you also agree, Mr. Martini, that</p> <p>22 in order to rerun the calculation, the</p> <p>23 corrections and updates to the stock record</p> <p>24 information would have to be entered manually?</p> <p>25 MS. NEUHARDT: Objection to form.</p> <p>TSG Reporting - Worldwide 877-702-9580</p>
<p style="text-align: right;">Page 88</p> <p>1 MARTINI</p> <p>2 A. If there is not an automated solution,</p> <p>3 the manual is the only way to do it.</p> <p>4 Q. Assuming there were thousands of</p> <p>5 adjustments to make, this process alone could</p> <p>6 take many months, correct?</p> <p>7 MS. NEUHARDT: Objection to form.</p> <p>8 A. I mean I couldn't comment on the</p> <p>9 length of time.</p> <p>10 Q. And in rerunning the calculation, sir,</p> <p>11 for LBI's c3 calculation from September 19,</p> <p>12 2008, once those stock records were corrected,</p> <p>13 do you agree that codings in the allocation</p> <p>14 program would need to be reviewed?</p> <p>15 MS. NEUHARDT: Objection to form.</p> <p>16 A. The first step in a 3-3 calculation is</p> <p>17 population correctness, and without question</p> <p>18 coding accounts is critical to having the right</p> <p>19 output.</p> <p>20 Q. Is that a yes?</p> <p>21 A. Yes.</p> <p>22 Q. So the answer to my question is yes?</p> <p>23 A. Yes.</p> <p>24 Q. And as part of that process, documents</p> <p>25 supporting the codings would need to be reviewed</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p style="text-align: right;">Page 89</p> <p>1 MARTINI</p> <p>2 to confirm that, correct? Do you agree?</p> <p>3 A. I am sorry, repeat that, please.</p> <p>4 Q. As part of that process, documents</p> <p>5 supporting the codings would need to be reviewed</p> <p>6 to insure that they were correct?</p> <p>7 MS. NEUHARDT: Objection, form.</p> <p>8 A. Sorry, I don't understand. What --</p> <p>9 process documents? Is that what you said?</p> <p>10 Q. As part of the process of reviewing</p> <p>11 the codings in the allocation program, it would</p> <p>12 be necessary to review documents supporting the</p> <p>13 codings to confirm they were correct. Do you</p> <p>14 agree?</p> <p>15 MS. NEUHARDT: Objection, form.</p> <p>16 A. I don't know what that means. Does</p> <p>17 that mean going back to account setups, things</p> <p>18 like that?</p> <p>19 Q. Let me ask it this way: What would be</p> <p>20 necessary, what steps would be involved in</p> <p>21 reviewing the codings in the allocation program?</p> <p>22 A. Based on the nature of the account.</p> <p>23 So LBI would have already coded their accounts.</p> <p>24 They should have been -- I would think their</p> <p>25 codings are correct.</p> <p>TSG Reporting - Worldwide 877-702-9580</p>

<p style="text-align: right;">Page 90</p> <p>1 MARTINI</p> <p>2 Q. So is it your testimony there would be</p> <p>3 no need to review the codings in the accounts</p> <p>4 because LBI had already coded them?</p> <p>5 MS. NEUHARDT: Objection, form.</p> <p>6 A. I don't know their -- I just don't</p> <p>7 know their process. So in other words, we</p> <p>8 spend -- when I do a calculation, we spend a lot</p> <p>9 of time on -- codes is the most important aspect</p> <p>10 to the reserve formula. If an account is not</p> <p>11 coded properly, it will not go through the</p> <p>12 system with the right output.</p> <p>13 Q. And how would you go about reviewing</p> <p>14 the codings in the allocation program if that</p> <p>15 were necessary?</p> <p>16 A. I think you would have to know the</p> <p>17 business and understand what the accounts</p> <p>18 represent and the nature of those accounts.</p> <p>19 Q. Would you also need, in order to rerun</p> <p>20 the c3 calculation, to review and reconcile</p> <p>21 money balances?</p> <p>22 A. I am sorry, I missed that. One more</p> <p>23 time.</p> <p>24 Q. Would you also need, in order to rerun</p> <p>25 the c3 calculation of LBI, to review and</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p style="text-align: right;">Page 91</p> <p>1 MARTINI</p> <p>2 reconcile money balances?</p> <p>3 A. Yes.</p> <p>4 Q. What would the purpose of that review</p> <p>5 and reconciliation be?</p> <p>6 A. To insure that the balances that drive</p> <p>7 the formula are accurate, tie into the firm's</p> <p>8 general ledger and books and records.</p> <p>9 Q. You have no basis to disagree with</p> <p>10 Mr. McIsaac's conclusion that this undertaking</p> <p>11 would require many months, significant funds and</p> <p>12 a large number of knowledgeable personnel to</p> <p>13 complete, do you?</p> <p>14 MS. NEUHARDT: Objection to form.</p> <p>15 A. Yeah, I can't say that that's</p> <p>16 incorrect. I don't have enough knowledge with</p> <p>17 Lehman's system or that process or exactly what</p> <p>18 they are trying to accomplish.</p> <p>19 MS. NEUHARDT: When you get to a</p> <p>20 subject matter break, can we take a quick</p> <p>21 lunch?</p> <p>22 MR. OXFORD: Yeah, we can take a quick</p> <p>23 lunch right now.</p> <p>24 (Recess)</p> <p>25</p> <p>TSG Reporting - Worldwide 877-702-9580</p>
<p style="text-align: right;">Page 92</p> <p>1 MARTINI</p> <p>2 Q. Mr. Martini, can you have in front of</p> <p>3 you Exhibit 828, your declaration, please.</p> <p>4 A. Yes.</p> <p>5 Q. Please turn to paragraph 3. If you</p> <p>6 look at the third bullet, you write that</p> <p>7 "Mr. McIsaac asserts that the trustee cannot</p> <p>8 rerun the reserve calculation to account for any</p> <p>9 identified discrepancies." Do you see that?</p> <p>10 A. Right, yes.</p> <p>11 Q. Could you explain to me what you meant</p> <p>12 by identified discrepancies?</p> <p>13 A. Any problems with the underlying data.</p> <p>14 Q. Could you turn to Mr. McIsaac's report</p> <p>15 which is Exhibit 693 and can you show me where</p> <p>16 in Mr. McIsaac's report he says that?</p> <p>17 WITNESS' ATTORNEY: Objection to form.</p> <p>18 A. I don't see where that exact phrase is</p> <p>19 stated. It was --</p> <p>20 Q. I am sorry, I didn't mean to</p> <p>21 interrupt.</p> <p>22 A. In total, the entire affidavit</p> <p>23 regarding running the reserve calculation.</p> <p>24 Q. Is there a particular section of the</p> <p>25 report that you are referring to, sir?</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p style="text-align: right;">Page 93</p> <p>1 MARTINI</p> <p>2 A. Well, in paragraph 32, so the general</p> <p>3 theme is that the trustee didn't have -- didn't</p> <p>4 have the ability to rerun the reserve</p> <p>5 calculation. And paragraph 31.</p> <p>6 Q. Maybe we have a definitional issue.</p> <p>7 When you refer to "identified discrepancy," sir,</p> <p>8 that you say that McIsaac claims the trustee</p> <p>9 can't rerun the reserve calculation to account</p> <p>10 for, you are aware, sir, that the trustee has</p> <p>11 identified particular discrepancies in the</p> <p>12 reserve calculation from September 19, 2008,</p> <p>13 correct?</p> <p>14 WITNESS' ATTORNEY: Objection, to</p> <p>15 form.</p> <p>16 Q. Let me try this again. Are you aware,</p> <p>17 Mr. Martini, that Mr. McIsaac has identified</p> <p>18 certain adjustments that need to be made to the</p> <p>19 LBI customer reserve calculation as of</p> <p>20 September 19, 2008?</p> <p>21 WITNESS' ATTORNEY: Objection to form.</p> <p>22 A. There are excerpts in the report that</p> <p>23 I have seen where he talks about discrepancies,</p> <p>24 correct.</p> <p>25 Q. And you're aware, sir, that</p> <p>TSG Reporting - Worldwide 877-702-9580</p>

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Mr. McIsaac's conclusion is that if those adjustments were made to the September 19, 2008 reserve calculation, then there would be a shortfall in the amount that should have been set aside for customers?

WITNESS' ATTORNEY: Objection to form.

A. Yeah, so my view is a complete calculation needs to be undertaken.

Q. OK, and why is that, sir?

A. To account for any discrepancies, all discrepancies.

Q. Are you aware of any discrepancies that existed in the September 19, 2008 reserve calculation that Mr. McIsaac didn't take account of?

WITNESS' ATTORNEY: Objection, he never worked at LBI.

A. I have no specifics, just it is the nature of the process of doing a reserve comp, the calculation of a reserve calculation, not just some identified errors. It is looking at the entire calculation, scrubbing all the data.

Q. OK, let's try this again. Mr. Martini, are you aware of a single discrepancy
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that existed in LBI's 9/19/2008 15c3-3 reserve computation that Mr. McIsaac did not take account of in either his affidavits or reports in this litigation?

WITNESS' ATTORNEY: Same objection.

A. Don't know the process that he undertook. In other words, does he have all of the discrepancies, does he have all the errors.

Q. OK, let me try this the third time. Are you aware of a single discrepancy that existed in LBI's 9/19/2008 15c3 reserve computation that Mr. McIsaac did not take account of in either of his affidavits or reports in this litigation?

WITNESS' ATTORNEY: Same objection, plus asked and answered.

Q. It is a yes or no question, sir. Do you know one way or the other?

A. I did not know. I did not work at Lehman, so I don't know specifically.

Q. And you haven't reviewed Mr. McIsaac's original affidavit in this matter, have you?

A. No.

Q. And you haven't reviewed Mr. McIsaac's
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testimony in this matter, have you?

A. No.

Q. Back to your affidavit, sir -- sorry, your declaration. The fourth bullet that you say Mr. McIsaac asserts and is incorrect, is that Barclays is able to rerun the reserve calculation for the identified discrepancies. Could you turn to Mr. McIsaac's report, Exhibit 693, and can you tell me where Mr. McIsaac says that?

WITNESS' ATTORNEY: You should look over the entire declaration.

Q. Take your time, sir.

A. Sorry, I am on 29. Paragraph 29, the last sentence after the closing of a sale transaction on September 22, 2008, Barclays took control of LBI's system including the legacy systems to store the information necessary to rerun the reserve calculation of September 19.

Q. OK, and is that the sum and substance of your -- the basis for your assertion that Mr. McIsaac says Barclays is able to rerun the reserve calculation for identified discrepancies?

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A. That, and in connection with 31 where he says that the trustee cannot run the calculation. So saying that the information -- that Barclays has access to the information to run the -- a 15c3-3 calculation and the trustee did not have the time -- the significant undertaking, so on and so forth. That's where that comment comes from.

Q. Anything else?

A. That's it.

Q. Do you agree, sir, that Barclays could adjust the September 19, 2008 reserve calculation for LBI to account for identified discrepancies?

WITNESS' ATTORNEY: Object to form.

A. Anybody could adjust the reserve calculation, but to me, that's -- I can't say that that's correct, you can't say that's full, a full process.

Q. You can't say it is a full process in what respect, sir?

A. To do a reserve calc. is -- a recalc. to me means you start from the beginning.

Q. And tell me again why it is your
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opinion that a recalculation was necessary in
this case?

WITNESS' ATTORNEY: Objection to form.

That mischaracterizes his testimony.

**Q. OK. Well, let's deal with that. Is
it your belief, sir, that in order to ascertain
what the reserve requirement was on
September 19, 2008, it was necessary for
someone, whether that be the trustee, his staff
or Barclays, to do a full recalculation of the
reserve requirement?**

WITNESS' ATTORNEY: Object to form.

A. I am sorry, can you repeat that
question.

**Q. Sure, can you read it back.
(Record read)**

WITNESS' ATTORNEY: Same objection.

A. I would say yes.

Q. Why?

A. Based on the nature of the
discrepancies outlined here.

**Q. Where is here, sir? You're pointing
to your declaration, which discrepancies do you
outline in your declaration?**

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WITNESS' ATTORNEY: Objection to form.

A. There were discrepancies in paragraph
18,--

Q. Paragraph 18 of what, sir?

A. 693.

Q. Anything else, sir?

WITNESS' ATTORNEY: Objection, form.

A. He has them. I have to go through
every paragraph. He has them in paragraph 7 --

**Q. Well, maybe we can do it this way, is
it your belief, sir, that because of the
specified and identified discrepancies in
Mr. McIsaac's report and affidavit, it is
necessary to do a full recalculation of the 15c3
reserve calculation as of September 19, 2008?**

WITNESS' ATTORNEY: Objection to form.

A. I would say the process to do the
recalculation would be to start from scratch.

**Q. I understand what the process is, sir.
I am asking why it is your belief that that
process is necessary in order to come to a
determination of the 15c3-3 reserve requirement
as of September 19, 2008?**

A. The fact he has noted discrepancies,
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as well as conversation that I have had as I
previously stated with individuals that have
said that there is a reconciliation being --
taking place by the TSA team.

**Q. I am handing you what has been marked
previously in these depositions as Exhibit 599.
You are welcome of course to look at the whole
document. I am only going to ask you I think
about the e-mail. But let me know when you have
had an opportunity to review that document and
then we can proceed.**

A. OK.

**Q. Have you seen this document before,
sir?**

A. I've seen this e-mail.

**Q. Have you seen the attachment to the
e-mail or just the e-mail?**

A. I have -- I'm not sure if I have seen
the attachment or all of these schedules. I may
have. I can't recall if I have seen the entire
schedule. I've seen the e-mail though.

Q. When did you see the e-mail?

A. I think this goes back to some point
in early 2009 as there was identified an issue

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with the ADP system that may have impacted
Barclays' calculation as well. So in that
e-mail, there was -- something was identified as
being a problem within ADP's allocation. Many
firms use ADP, so it was a street-wide issue so
that information was sent to me, sent to me
through Matt Huey.

Q. Matt Huey sent you this e-mail, sir?

A. Either sent me the e-mail or discussed
the issue with me. Or maybe, maybe it came from
Joel, Joel could have done it as well. I don't
know who I got the e-mail from. Honestly, I
would have to go back and check, but I've seen
it. I remember seeing this.

**Q. Do you remember seeing this e-mail at
about the time it was sent early January of
2009?**

A. I remember this as being an issue some
point in '09.

**Q. OK, did you see this document in
preparation for your deposition?**

A. I did.

**Q. We have talked about who Bill Burke
is?**

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<p>1 MARTINI</p> <p>2 A. Um-hm, yes.</p> <p>3 Q. Who is Daniram Sudarsan? Apologies if</p> <p>4 I am murdering that.</p> <p>5 A. A individual who works for Alex</p> <p>6 Crepeau.</p> <p>7 Q. And he was an employee of Barclays in</p> <p>8 January '09?</p> <p>9 WITNESS' ATTORNEY: Objection, form.</p> <p>10 A. Yes, I believe so.</p> <p>11 Q. Who is Kendall McLaughlin?</p> <p>12 A. He was the predecessor to Alex</p> <p>13 Crepeau.</p> <p>14 Q. What was his title if you know in</p> <p>15 January 2009?</p> <p>16 A. I believe senior vice president or,</p> <p>17 excuse me, director.</p> <p>18 Q. What was he responsible for?</p> <p>19 A. Regulatory operations.</p> <p>20 Q. Is he with Barclays today, sir?</p> <p>21 A. No.</p> <p>22 Q. Do you know where he is employed?</p> <p>23 A. Citigroup.</p> <p>24 Q. When did he move to Citigroup if you</p> <p>25 know?</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 MARTINI</p> <p>2 A. Some point in the summer of 2009, I</p> <p>3 believe.</p> <p>4 Q. Salvatore Buonocore?</p> <p>5 A. He is somebody in operations. I don't</p> <p>6 really interact with him. I don't know if he is</p> <p>7 still here or not.</p> <p>8 Q. He was, to your knowledge, a Barclays</p> <p>9 employee?</p> <p>10 A. Yup.</p> <p>11 Q. In January of '09?</p> <p>12 A. Yup. Yes.</p> <p>13 Q. Do you see the Sudarsan writes to</p> <p>14 Mr. McLaughlin, "Kendall, we had a meeting where</p> <p>15 Sal and myself discussed with Bill and Joel the</p> <p>16 revised reserve formula as of 9/19/08 based on</p> <p>17 the revised allocation of the books produced by</p> <p>18 Broadridge. The net effect was that the reserve</p> <p>19 requirement increased by 213 ml, do you see</p> <p>20 that?</p> <p>21 A. Um-hm. Yes.</p> <p>22 Q. Can you, do you have an understanding</p> <p>23 of what Mr. Sudarsan was talking about when he</p> <p>24 sent that e-mail?</p> <p>25 A. I understand what the issue is, yes.</p> <p>TSG Reporting - Worldwide 877-702-9580</p>
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<p>1 MARTINI</p> <p>2 Q. Can you tell me what the issue is on</p> <p>3 this?</p> <p>4 A. He is saying he identified two issues</p> <p>5 and a net impact of 213 million. One impact</p> <p>6 increased the requirement by 468 million due to</p> <p>7 a double allocation and another issue resulted</p> <p>8 in a benefit of 255 million.</p> <p>9 Q. Were you involved in contemporaneous</p> <p>10 discussions with the individuals on this e-mail</p> <p>11 about this subject?</p> <p>12 WITNESS' ATTORNEY: Objection, form.</p> <p>13 A. This issue was only raised to me as a</p> <p>14 result of the ADP issue, the fact that there was</p> <p>15 a double allocation of 097. So make sure that</p> <p>16 that was not an impact to Barclays Capital,</p> <p>17 Barclays Capital ADP 293 allocation which is a</p> <p>18 legacy system for Barclays.</p> <p>19 Q. This e-mail concerns Barclays'</p> <p>20 employees revising the LBI reserve formula as of</p> <p>21 September 19, 2008, do you agree?</p> <p>22 WITNESS' ATTORNEY: Objection,</p> <p>23 mischaracterizes the document.</p> <p>24 A. Say that one more time, please.</p> <p>25 Q. Do you agree, sir, that this e-mail</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 MARTINI</p> <p>2 concerns Barclays' employees calculating a</p> <p>3 revised LBI reserve formula as of September</p> <p>4 18 -- sorry, 19, 2008?</p> <p>5 WITNESS' ATTORNEY: Same objection.</p> <p>6 A. I would say this is not a revised</p> <p>7 reserve formula. This is two issues that were</p> <p>8 identified and someone is saying the net effect</p> <p>9 of those two issues will have X amount of impact</p> <p>10 to the reserve requirement.</p> <p>11 Q. But not to the Barclays reserve</p> <p>12 requirement, the LBI reserve requirement,</p> <p>13 correct?</p> <p>14 A. Correct.</p> <p>15 Q. And with effect from or on the LBI</p> <p>16 reserve formula as of September 19, 2008,</p> <p>17 correct?</p> <p>18 A. Correct.</p> <p>19 Q. Do you know why they did that?</p> <p>20 WITNESS' ATTORNEY: Objection to form.</p> <p>21 A. Why they did --</p> <p>22 Q. Why they calculated the effect of</p> <p>23 these adjustments on the LBI reserve requirement</p> <p>24 as of September 19, 2008?</p> <p>25 A. I don't know. My understanding would</p> <p>TSG Reporting - Worldwide 877-702-9580</p>

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be having some understanding of this particular issue that was happening was -- there was questions from the SEC for, I believe, Kendall McLaughlin to go back and ascertain customer assets or location of customer assets that were not segregated and through that review, two issues came up, these two issues.

Q. How is it you came to this understanding, sir?

A. Discussions with individuals at the time.

Q. And which individuals, sir?

A. Kendall, Daniram would have been aware that they were doing something like that.

Q. Do you know, sir, whether the net effect of these adjustments on the LBI reserve formula as of September 19, 2008, this 213 million adjustment referenced in Exhibit 599 was communicated by Barclays to the SEC?

WITNESS' ATTORNEY: Objection to form.

A. I don't know.

Q. Do you agree that this e-mail reflects an adjustment to the reserve requirement for LBI as of September 19, 2008 on September 17, 2008?

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WITNESS' ATTORNEY: Objection to form.

A. Based on this is what the document says. So it says as of 9/19. I have no knowledge what day they looked at it.

Q. Do you agree, sir, that Barclays was able to account for those identified discrepancies that you have just testified to by adjusting the reserve calculation to the tune of 213 million dollars?

WITNESS' ATTORNEY: Objection to form.

A. Sorry, if you can rephrase that for me.

MR. OXFORD: Sure, can you read it back, please, Mary.

(Record read)

Q. NOTE: 213)?

WITNESS' ATTORNEY: Same objection.

A. I don't know the answer to that question. You are saying is Barclays able to adjust the reserve formula for this?

Q. Yes.

A. This one adjustment? I suppose somebody could say that you could put that as one component or one adjustment to a number, to

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the reserve calculation, yes.

Q. Do you know whether Barclays reran the LBI reserve formula as of September 19, 2008 --

A. When we say --

WITNESS' ATTORNEY: Objection to form.

A. When you say Barclays, who do we mean?

Q. I mean anybody employed by Barclays or working at the direction of Barclays.

WITNESS' ATTORNEY: Those are two different things.

A. So nobody at the direction -- working for Barclays for Barclays Capital Inc. would have performed any 15c3 calculation for LBI.

Q. Why not?

A. We weren't asked to. Why would we?

Q. Was Barclays asked to calculate the net effect of the adjustments reflected in this e-mail on the reserve formula for LBI as of September 19, 2008?

WITNESS' ATTORNEY: Objection to form.

A. I was never instructed. I did not -- first of all, the time of this e-mail, it would have been Matthew Huey, and to my knowledge, he was not instructed by the SEC or anyone to do a

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calculation.

Q. To your knowledge, sir, was anybody at Barclays asked to calculate the net effect on the reserve requirement for LBI as of September 19th, 2008 as a consequence of the errors that are identified in Exhibit 599?

WITNESS' ATTORNEY: Objection to form.

A. I have no knowledge of those discussions, no knowledge of anybody who instructed to change the reserve requirement as of 9/19.

Q. You have no knowledge whether Barclays was asked to calculate the net effect on LBI's reserve requirement?

A. Not to my knowledge.

WITNESS' ATTORNEY: Objection to form.

Q. Back to your declaration, sir. Keeping with paragraph 4, after you say that Mr. McIsaac's statements are incorrect, you say, "Although Barclays acquired LBI's systems, its employees are entitled to access only the information located on those systems that is associated with the 'Business' acquired by Barclays from Lehman pursuant to the asset

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<p>1 MARTINI</p> <p>2 purchase agreement, including the clarification</p> <p>3 letter thereto between Barclays, LBI and other</p> <p>4 Lehman entities," and you define that as the</p> <p>5 "purchase agreement." Do you see that, sir?</p> <p>6 A. Yes.</p> <p>7 Q. Have you ever seen the asset purchase</p> <p>8 agreement?</p> <p>9 A. No.</p> <p>10 Q. Have you ever seen the clarification</p> <p>11 letter to the purchase agreement?</p> <p>12 A. No.</p> <p>13 Q. And you're not a lawyer, sir?</p> <p>14 A. No.</p> <p>15 WITNESS' ATTORNEY: I am sorry, what's</p> <p>16 the question? OK.</p> <p>17 Q. Is this statement in paragraph 4 that</p> <p>18 I just read based on your personal knowledge,</p> <p>19 sir?</p> <p>20 WITNESS' ATTORNEY: Objection to form.</p> <p>21 A. This is based on my personal knowledge</p> <p>22 of understanding the business of Barclays</p> <p>23 Capital, knowing that it acquired certain assets</p> <p>24 of LBI and that those assets were contained in a</p> <p>25 system called ADP 224, that my team computed</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 MARTINI</p> <p>2 reserve calculations for after the acquisition.</p> <p>3 Q. OK, and you testified, sir, under</p> <p>4 penalty of perjury, that you have personal</p> <p>5 knowledge that pursuant to the asset purchase</p> <p>6 agreement and the clarification letter, Barclays</p> <p>7 only has -- sorry, is only entitled to access to</p> <p>8 information located on those systems associated</p> <p>9 with "the business acquired by Lehman," correct?</p> <p>10 A. Yes.</p> <p>11 WITNESS' ATTORNEY: No, that</p> <p>12 mischaracterizes the statement in his</p> <p>13 declaration. You can quote the declaration,</p> <p>14 but you reversed it there.</p> <p>15 A. Please repeat for me.</p> <p>16 Q. Well, I think I had my answer, but</p> <p>17 let's try and break it up. You say that you</p> <p>18 have -- withdrawn.</p> <p>19 Do you have personal knowledge, sir,</p> <p>20 of what -- of what the business is that Barclays</p> <p>21 acquired from Lehman pursuant to the asset</p> <p>22 purchase agreement and the clarification letter?</p> <p>23 A. I have knowledge in my position at</p> <p>24 Barclays that we did not acquire 100 percent of</p> <p>25 the assets of LBI. We acquired certain assets</p> <p>TSG Reporting - Worldwide 877-702-9580</p>
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<p>1 MARTINI</p> <p>2 that, quote/unquote, is referred to as the</p> <p>3 business. The most notable business, as I have</p> <p>4 said before, was the wealth business, and that</p> <p>5 those assets that we acquired, my team has</p> <p>6 access to the computer reserve calculation for.</p> <p>7 Q. It is true, sir, your knowledge about</p> <p>8 what Barclays acquired is based on a practical</p> <p>9 experience in the business, correct?</p> <p>10 A. Practical experience in the business</p> <p>11 and my understanding of the activities of</p> <p>12 Barclays Capital.</p> <p>13 Q. You haven't reviewed the asset</p> <p>14 purchase agreement, have you, sir?</p> <p>15 WITNESS' ATTORNEY: Asked and</p> <p>16 answered.</p> <p>17 A. I am sorry?</p> <p>18 WITNESS' ATTORNEY: I objected. You</p> <p>19 can answer.</p> <p>20 A. I have not reviewed the asset purchase</p> <p>21 agreement.</p> <p>22 Q. You have never seen it?</p> <p>23 A. I've not seen it.</p> <p>24 Q. You have never seen the clarification</p> <p>25 letter, sir?</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 MARTINI</p> <p>2 A. No.</p> <p>3 Q. Do you even know what the</p> <p>4 clarification letter is, sir?</p> <p>5 WITNESS' ATTORNEY: Object to form.</p> <p>6 A. No.</p> <p>7 Q. Would you recognize the document if I</p> <p>8 put it in front of you?</p> <p>9 A. No.</p> <p>10 Q. Would you recognize the asset purchase</p> <p>11 agreement if I put it in front of you?</p> <p>12 A. By the title maybe.</p> <p>13 Q. But you don't know?</p> <p>14 A. Don't know.</p> <p>15 Q. Tell me how it is that you're able to</p> <p>16 testify from your personal knowledge about what</p> <p>17 Barclays is entitled to do underneath those --</p> <p>18 under those two documents that you have never</p> <p>19 seen and you may not recognize?</p> <p>20 WITNESS' ATTORNEY: Objection, you are</p> <p>21 mischaracterizing his declaration.</p> <p>22 A. My statement refers to the assets that</p> <p>23 Barclays acquired that I see in our books and</p> <p>24 records subsequent to the acquisition date that</p> <p>25 my team creates a customer reserve from.</p> <p>TSG Reporting - Worldwide 877-702-9580</p>

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So I'm not a lawyer. I was not involved in the sale. I could not tell you specifically if you put all the assets on a schedule which ones we acquired, which one we didn't. But I know, to my personal knowledge of the firm, we did not acquire 100 percent of the LBI assets and I can look at a record under the control of my team and having access to the records of what we have on our books and records.

Q. You mentioned, I believe it was this morning, sir, that one of the things that Barclays would need in order to rerun LBI's reserve calculation as of September 19, 2008 would be certain key employees?

A. Yes.

Q. Of LBI? Yes?

A. Yes.

Q. And I think you mentioned Bill Burke as one of those key employees?

A. Yes.

Q. Is there anybody else who is on that list of key employees?

A. I don't know the full list. I only

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know that Bill Burke, to my knowledge, ran the 15c3 calculation for LBI. So he is the point person. He is responsible for the calculation. Are there other people in the firm? Yes, probably.

Q. To your knowledge, sir, was Mr. Burke involved in calculating the effect on the reserve requirement of the -- of LBI as of September 19, 2008 that was identified in Exhibit 599?

WITNESS' ATTORNEY: Objection to form.

A. I don't know. I don't know what his role was.

Q. Is it your testimony, sir, because Mr. Burke worked for the TSA, he wouldn't be available to Barclays to assist them with rerunning LBI's 15c3 calculation as of September 19, 2008?

A. My understanding is Barclays doesn't have access to Mr. Burke regarding the LBI calculation unless the trustee instructs us.

Q. Could you know whether request has been made by Barclays at any time to the trustee for Barclays to use the services of Mr. Burke
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notwithstanding that he is primarily employed under the TSA?

WITNESS' ATTORNEY: You can answer only to the extent that you don't reveal matters that were discussed in attorney/client conversations.

A. Please rephrase that question.

Q. Sure. Do you know whether any request has been made by Barclays at any time to the trustee for Barclays to use the services of Mr. Burke notwithstanding that he is primarily employed by TSA?

WITNESS' ATTORNEY: Same instruction.

A. I'm not aware that Barclays has asked the trustee to use Bill Burke. I'm not aware of that.

Q. Was Mr. Potenciano involved in the calculation of the 15c3-3 reserve formula when he was employed by Lehman?

A. Yes.

Q. And he is now employed by Barclays, correct?

A. Yes.

Q. And you have unfettered access to

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Mr. Potenciano's services, right?

WITNESS' ATTORNEY: Object to form.

A. Yeah, Mr. Potenciano worked within my team, yes.

Q. And Mr. Sudarson is also employed on your team, right?

A. Not on my team. He is operations.

Q. He is part of the operations control group?

A. Yes.

Q. And he is employed by Barclays, correct?

A. Yes.

Q. And he used to be employed by Lehman, correct?

A. Yes.

Q. And he was in Lehman's operations control group, wasn't he?

A. Yes, I believe regulatory operations.

Q. And in that capacity, he was involved in the calculations of Lehman's 15c3-3 reserve formulas during his employment by Lehman?

A. He would have -- the nature of that role is he would have worked with Bill Burke
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<p>1 MARTINI</p> <p>2 team to analyze information.</p> <p>3 Q. So that's a yes?</p> <p>4 WITNESS' ATTORNEY: Objection form.</p> <p>5 A. The answer is, I am saying, he does</p> <p>6 not compute the reserve requirement. He is an</p> <p>7 individual who may supply information to Bill</p> <p>8 Burke or his team.</p> <p>9 Q. Do you know Kleber Rodriguez?</p> <p>10 A. I know of him.</p> <p>11 Q. Have you ever met him?</p> <p>12 A. I've met him.</p> <p>13 Q. Do you know what his position was at</p> <p>14 Lehman in the fall of 2008?</p> <p>15 A. I don't know specifically what his</p> <p>16 role was.</p> <p>17 Q. Do you know whether he had any</p> <p>18 involvement in the computation of the Lehman's</p> <p>19 15c3-3 reserve formula?</p> <p>20 A. I don't know specifically what his</p> <p>21 involvement was.</p> <p>22 Q. Can you turn to paragraph 6 of your</p> <p>23 declaration, please.</p> <p>24 A. OK.</p> <p>25 Q. You write, sir, that the trustee has</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 MARTINI</p> <p>2 or has access to the relevant information</p> <p>3 necessary to rerun LBI's September 17, 2008 or</p> <p>4 September 19, 2008 reserve calculations</p> <p>5 including to account for any discrepancies that</p> <p>6 may have to be identified later by the trustee</p> <p>7 related to those calculations. Do you see that?</p> <p>8 A. Yes.</p> <p>9 Q. What do you mean by "relevant</p> <p>10 information," sir?</p> <p>11 A. I mean any adjustments that would be</p> <p>12 needed to be incorporated, adjustments from</p> <p>13 identified errors or reconciliation processes.</p> <p>14 Q. But you don't know one way or the</p> <p>15 other whether any such errors have been</p> <p>16 identified here, sir?</p> <p>17 WITNESS' ATTORNEY: Objection to form.</p> <p>18 A. To the trustee?</p> <p>19 Q. I think you said "by the trustee" not</p> <p>20 "to the trustee" in your sentence here, sir.</p> <p>21 WITNESS' ATTORNEY: Objection, he</p> <p>22 didn't say anything about the trustee in his</p> <p>23 original answer.</p> <p>24 MR. OXFORD: I am not talking about</p> <p>25 his original answer. I'm talking about his</p> <p>TSG Reporting - Worldwide 877-702-9580</p>
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<p>1 MARTINI</p> <p>2 declaration.</p> <p>3 Q. Let's start this again. You said that</p> <p>4 by relevant information, sir, in paragraph 6 of</p> <p>5 your declaration, you made any adjustments that</p> <p>6 would be needed to be incorporated from</p> <p>7 identification errors or reconciliation</p> <p>8 processes, correct?</p> <p>9 A. Yes, sir, any relevant information</p> <p>10 meaning books and records of LBI.</p> <p>11 Q. But sitting here today, sir, you don't</p> <p>12 know one way or the other whether or not there</p> <p>13 are any adjustments that need to be incorporated</p> <p>14 in the reserve formula calculation --</p> <p>15 WITNESS' ATTORNEY: Objection to form.</p> <p>16 Q. -- to take account of identified</p> <p>17 errors through the reconciliation process, do</p> <p>18 you?</p> <p>19 WITNESS' ATTORNEY: Same objection.</p> <p>20 A. I am sorry, that one you are going to</p> <p>21 have to break up for me. Sorry, I apologize.</p> <p>22 MR. OXFORD: Can you read it back</p> <p>23 please, Mary.</p> <p>24 (Record read)</p> <p>25 A. Yeah, I would say I don't work on the</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 MARTINI</p> <p>2 LBI calculation. I was not a Lehman employee,</p> <p>3 so I don't know the full scope of what they have</p> <p>4 identified or not identified.</p> <p>5 Q. In fact, you don't know anything about</p> <p>6 the scope of what has been identified, if</p> <p>7 anything, do you, sir?</p> <p>8 WITNESS' ATTORNEY: Objection to form.</p> <p>9 A. As far as?</p> <p>10 Q. Errors that would need to be accounted</p> <p>11 for in the rerunning of Lehman's 15c3-3</p> <p>12 calculation as of September 19, 2008?</p> <p>13 WITNESS' ATTORNEY: Objection, form.</p> <p>14 A. I don't have knowledge of items except</p> <p>15 for what's in here of an identifier that I have</p> <p>16 been exposed to.</p> <p>17 Q. And just for the record, sir, do you</p> <p>18 agree that when you said in here --</p> <p>19 A. Yes.</p> <p>20 Q. -- you were referring to the errors</p> <p>21 identified and described in Exhibit 599?</p> <p>22 A. Yes.</p> <p>23 MR. OXFORD: We have been going about</p> <p>24 an hour after lunch, if we want to take five</p> <p>25 minutes.</p> <p>TSG Reporting - Worldwide 877-702-9580</p>

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<p>1 MARTINI</p> <p>2 (Recess)</p> <p>3 Q. Mr. Martini, do you agree that the</p> <p>4 purpose of Rule 15c3-3 is to protect customers</p> <p>5 or broker/dealers?</p> <p>6 WITNESS' ATTORNEY: Objection, form.</p> <p>7 A. The rule is put in place to protect</p> <p>8 customers. It is the customer protection rule,</p> <p>9 that's the name of it.</p> <p>10 Q. Do you agree that Rule 15c3-3 is</p> <p>11 intended to insure that fully paid customer</p> <p>12 property and excess margin securities are</p> <p>13 unconditionally available to satisfy customer</p> <p>14 claims in the event of a broker deal</p> <p>15 liquidation?</p> <p>16 WITNESS' ATTORNEY: Objection to form.</p> <p>17 A. The purpose of the capital rule,</p> <p>18 reserve rule is that in a liquidation scenario,</p> <p>19 the firm either has enough capital to support</p> <p>20 its obligations or it would have enough funds in</p> <p>21 a reserve account to unwind the broker/dealer in</p> <p>22 an orderly fashion.</p> <p>23 Q. And to satisfy customer claims in that</p> <p>24 scenario, sir, correct?</p> <p>25 WITNESS' ATTORNEY: Objection, form.</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 MARTINI</p> <p>2 A. Not being a SIPC attorney, I think</p> <p>3 that's the theory of the rule. The practice of</p> <p>4 the rule, I'm not sure.</p> <p>5 Q. Have you ever heard of 15c3-3 reserve</p> <p>6 funds being referred to as "margin"?</p> <p>7 A. I don't understand.</p> <p>8 Q. You understand that pursuant to Rule</p> <p>9 15c3-3, a broker/dealer is required to do a</p> <p>10 calculation on a weekly basis, correct?</p> <p>11 A. Yup, and a monthly basis, yeah.</p> <p>12 Q. And pursuant to that calculation, a</p> <p>13 certain sum of money or other assets has to be</p> <p>14 locked up in a reserve account, correct?</p> <p>15 A. Correct.</p> <p>16 Q. Have you ever heard of that reserve</p> <p>17 account or the funds in that reserve account</p> <p>18 being referred to as "margin," M-A-R-G-I-N?</p> <p>19 WITNESS' ATTORNEY: Object to form.</p> <p>20 A. No, I'm not sure of the context of</p> <p>21 that.</p> <p>22 Q. Have you ever heard of them referred</p> <p>23 to as "guarantee funds"?</p> <p>24 A. No.</p> <p>25 WITNESS' ATTORNEY: Object to form.</p> <p>TSG Reporting - Worldwide 877-702-9580</p>
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<p>1 MARTINI</p> <p>2 Q. Could you have Exhibit 590 in front of</p> <p>3 you please, sir.</p> <p>4 WITNESS' ATTORNEY: 599?</p> <p>5 Q. 590. Do you have that, sir?</p> <p>6 A. Yes.</p> <p>7 Q. That's Mr. McIsaac's affidavit,</p> <p>8 October 5, 2009.</p> <p>9 A. OK.</p> <p>10 Q. Could you take a look at paragraph 16.</p> <p>11 It's on page 5.</p> <p>12 A. OK.</p> <p>13 Q. Do you agree with what Mr. McIsaac</p> <p>14 says in paragraph 16.</p> <p>15 WITNESS' ATTORNEY: Object to form.</p> <p>16 A. So the first sentence, that a</p> <p>17 broker/dealer -- the rule requires a</p> <p>18 broker/dealer to have physical possession or</p> <p>19 control of fully paid and excess margin</p> <p>20 securities. So that's right out of the rule?</p> <p>21 Excess margin securities are --</p> <p>22 Q. Well, if you can just stop there.</p> <p>23 It's -- do you agree with the first sentence</p> <p>24 that Mr. McIsaac has in paragraph 16?</p> <p>25 WITNESS' ATTORNEY: Object to form.</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 MARTINI</p> <p>2 A. That is the purpose of the rule. The</p> <p>3 purpose of the rule is the possession or control</p> <p>4 of fully paid and excess margin securities.</p> <p>5 Q. So that's a yes, you do agree?</p> <p>6 A. I agree that is the object of the</p> <p>7 rule.</p> <p>8 Q. Can you tell me if you agree with the</p> <p>9 second sentence?</p> <p>10 WITNESS' ATTORNEY: Object to form.</p> <p>11 A. Understand what excess margin</p> <p>12 securities are, so they are above -- a</p> <p>13 broker/dealer may hypothecate based on the</p> <p>14 margin debit.</p> <p>15 Q. So is the answer to my question, do</p> <p>16 you agree with what Mr. McIsaac writes in</p> <p>17 sentence 2 of paragraph 16 yes?</p> <p>18 WITNESS' ATTORNEY: I object to form.</p> <p>19 A. It is accurate, accurate per the rule.</p> <p>20 Q. Do you agree with what Mr. McIsaac</p> <p>21 writes in the third sentence of paragraph 16?</p> <p>22 WITNESS' ATTORNEY: Object to form.</p> <p>23 A. I'm not sure what he means there, so</p> <p>24 what does it mean when he is saying he is not in</p> <p>25 actual possession of a customer security? I</p> <p>TSG Reporting - Worldwide 877-702-9580</p>

1 MARTINI
2 don't know what that means.
3 Q. Well, do you know, sir, that
4 broker/dealers often have customer securities
5 custodied at third parties?
6 A. Yes.
7 Q. If that's what Mr. McIsaac means, do
8 you agree with his third sentence in paragraph
9 16?
10 WITNESS' ATTORNEY: Object to form.
11 A. OK, it seems accurate.
12 Q. OK. And I'm happy to do this line by
13 line or sentence by sentence or paragraph by
14 paragraph.
15 I am going to start with the paragraph
16 by paragraph and see if we can do it this way
17 for speed, but if we need to break it down, I am
18 happy to do so further.
19 Could you read paragraph 17 of
20 Mr. McIsaac's October 5 affidavit and tell me
21 whether you agree with it.
22 WITNESS' ATTORNEY: Object to form.
23 A. It seems accurate.
24 Q. Same question for paragraph 18, can
25 you read that and tell me whether you agree with
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1 MARTINI
2 Q. And same question for paragraph 22, do
3 you agree with what Mr. McIsaac writes in
4 paragraph 22?
5 WITNESS' ATTORNEY: Object to form.
6 A. 22, yes, 22 correct.
7 Q. So you agree with everything that
8 Mr. McIsaac writes in paragraph 16 through 22?
9 WITNESS' ATTORNEY: Object to form.
10 A. The excerpts he has here are correctly
11 from the rule itself.
12 Q. So that's a yes, Mr. Oxford, I agree
13 with Mr. McIsaac in everything he writes in
14 paragraphs 16 through 22?
15 WITNESS' ATTORNEY: Object to form.
16 A. Mr. McIsaac has the appropriate rule
17 references for those paragraphs.
18 Q. And not just the appropriate rule
19 references. To the extent he characterizes
20 those rules and the effect of those rules, you
21 agree with them, correct?
22 WITNESS' ATTORNEY: Object to form.
23 A. That is the essence, that is the
24 essence of the customer reserve rule.
25 Q. Can you tell me what is a good control
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1 MARTINI
2 it?
3 WITNESS' ATTORNEY: Object to form.
4 A. That seems accurate.
5 Q. Thank you. Same question for
6 paragraph 19, do you agree with what Mr. McIsaac
7 writes in paragraph 19?
8 WITNESS' ATTORNEY: Object to form.
9 A. It comes out of the rule, it's
10 accurate.
11 Q. Same question for paragraph 20, do you
12 agree with that?
13 WITNESS' ATTORNEY: Object to form.
14 A. Correct.
15 Q. Correct, you agree that Mr. -- with
16 what Mr. McIsaac writes in paragraph 20?
17 A. Yes.
18 Q. Do you agree with what Mr. McIsaac
19 writes in paragraph 21?
20 WITNESS' ATTORNEY: Object to form.
21 A. Correct.
22 Q. Do you agree with what Mr. McIsaac
23 writes in paragraph 21, yes?
24 WITNESS' ATTORNEY: Object to form.
25 A. Correct.
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1 MARTINI
2 location in the context of Rule 15c3-3?
3 WITNESS' ATTORNEY: Object to form.
4 A. Control location are locations
5 approved by the SEC and specific locations per
6 the rule, possession or control is not required
7 to take over a certain period of time. So I
8 really can't go through every scenario. To be
9 honest, that is an actual function performed by
10 an operations team, not my team.
11 Q. Do you know how the good control
12 requirements of 15c3-3 apply to securities
13 launched abroad?
14 WITNESS' ATTORNEY: Object to form.
15 A. Do you have an example?
16 Q. I can give you a example, but before
17 we get to that, I wonder if you are able to tell
18 me in general terms how the good control
19 requirements of Rule 15c3-3 apply to the
20 securities that are launched outside of the
21 U.S.?
22 WITNESS' ATTORNEY: Object to form.
23 A. I have an understanding of that
24 process, that rule.
25 Q. Can you tell me how they apply, how
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<p>1 MARTINI</p> <p>2 the requirements of that rule apply to</p> <p>3 securities launched outside of the U.S.?</p> <p>4 WITNESS' ATTORNEY: Object to form.</p> <p>5 A. It applies to other locations, whether</p> <p>6 those locations are considered a good control</p> <p>7 locations per the SEC.</p> <p>8 Q. So the SEC has to approve a location</p> <p>9 as a good control location outside of the U.S.,</p> <p>10 correct?</p> <p>11 A. Correct.</p> <p>12 WITNESS' ATTORNEY: Object to form.</p> <p>13 Q. It is true also the securities must be</p> <p>14 free of any lien or claim of any kind, correct?</p> <p>15 WITNESS' ATTORNEY: Object to form.</p> <p>16 A. Correct.</p> <p>17 Q. It also true the securities must be</p> <p>18 freely transferable?</p> <p>19 WITNESS' ATTORNEY: Object to form.</p> <p>20 A. Correct.</p> <p>21 Q. Do you agree, sir, that, any property</p> <p>22 that's not in a good control location must be</p> <p>23 added to the c3 reserve calculation until such</p> <p>24 time as it is placed in a good control location?</p> <p>25 WITNESS' ATTORNEY: Object to form.</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 MARTINI</p> <p>2 A. A location that doesn't meet the</p> <p>3 definition of a good control location in a</p> <p>4 specified time periods as allowed by the rule,</p> <p>5 if something is in a location, it goes into the</p> <p>6 reserve formula.</p> <p>7 Q. I'm not sure I quite followed your</p> <p>8 answer. I think I did, but I want to make sure</p> <p>9 we are understanding each other.</p> <p>10 Is it your testimony, sir, that if</p> <p>11 property that is required to be in a good</p> <p>12 control location per Rule 15c3-3 is not in a</p> <p>13 good control location, then it must be added to</p> <p>14 the reserve formula calculation until such time</p> <p>15 as it is placed in a good control location?</p> <p>16 WITNESS' ATTORNEY: Object to form.</p> <p>17 A. Generally that is the case.</p> <p>18 Q. And you agree that the point at which</p> <p>19 the property must be added to the reserve</p> <p>20 calculation is the point at which the control</p> <p>21 location is no longer good?</p> <p>22 WITNESS' ATTORNEY: Object to form.</p> <p>23 A. Sounds correct.</p> <p>24 Q. Do you agree, sir, that an entity that</p> <p>25 is in insolvency proceedings is not a good</p> <p>TSG Reporting - Worldwide 877-702-9580</p>
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<p>1 MARTINI</p> <p>2 control location?</p> <p>3 WITNESS' ATTORNEY: Object to form.</p> <p>4 A. Having not looked at that issue</p> <p>5 specifically, that would seem to make sense.</p> <p>6 Q. Would it also make sense to you, sir,</p> <p>7 that customer property that is held in an entity</p> <p>8 that becomes insolvent must be added to the</p> <p>9 reserve calculation?</p> <p>10 WITNESS' ATTORNEY: Object to form.</p> <p>11 A. I'm not sure. Can you rephrase that</p> <p>12 or say that again, please.</p> <p>13 Q. Sure. Would it also make sense to you</p> <p>14 that customer property that is held in an entity</p> <p>15 that becomes insolvent must then be added to the</p> <p>16 c3 reserve calculation?</p> <p>17 WITNESS' ATTORNEY: Object to form.</p> <p>18 A. Yeah, I would say that that's correct.</p> <p>19 Q. Do you agree, sir, if customer cash is</p> <p>20 being transferred from a broker/dealer to a</p> <p>21 customer through an intermediary and the</p> <p>22 intermediary does not pay the customer, the</p> <p>23 broker/dealer will still owe the cash to the</p> <p>24 customer?</p> <p>25 WITNESS' ATTORNEY: Object to form.</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 MARTINI</p> <p>2 A. Explain that to me slowly how that</p> <p>3 works, please.</p> <p>4 Q. If a broker/dealer whose customer --</p> <p>5 owes the customer cash?</p> <p>6 A. The broker/dealer, sorry, owes the</p> <p>7 customer cash?</p> <p>8 Q. Yes, and attempts to transfer that</p> <p>9 cash to the customer through an intermediary,</p> <p>10 but the intermediary does not pay the customer,</p> <p>11 do you agree that the broker/dealer still owes</p> <p>12 that cash to the customer?</p> <p>13 WITNESS' ATTORNEY: Object to form.</p> <p>14 A. We are talking general or a</p> <p>15 bankruptcy?</p> <p>16 Q. Yeah, in general terms.</p> <p>17 A. So the intermediary never gave the</p> <p>18 cash to the customer? That sounds like</p> <p>19 possession, a possession or control requirement</p> <p>20 for the broker/dealer.</p> <p>21 Q. And that means that that cash that is</p> <p>22 owed to the customer should be accounted for in</p> <p>23 the 15c3 reserve formula computation, correct?</p> <p>24 WITNESS' ATTORNEY: Object to form.</p> <p>25 A. I have no basis to dispute that,</p> <p>TSG Reporting - Worldwide 877-702-9580</p>

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without seeing specific examples. In general, that makes sense, but of course, nothing is ever simple in real terms.

Q. Ain't that the truth.

Can we go off the record. I think I may be done. Could you give us two minutes and I can consult.

(Recess)

Q. Mr. Martini, one more question. Could you have your declaration in front of you.

A. Yes.

Q. Turn to paragraph 6.

A. OK.

Q. You see you reference two dates in there, September 17 and September 19, 2008?

A. Um-hm.

Q. What was the reason you referenced September 17, 2008, sir?

A. Because those are the calculation dates referenced in Issacson's affidavit -- I am sorry, McIsaac's rebuttal.

Q. I'll come back to that in just a second, sir. I'm reminded that when I asked you initially, sir, what documents you looked at in

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preparation for your deposition, you mentioned two documents, do you remember that? You identified your declaration, sir, and you identified the March 14 McIsaac report, right?

A. McIsaac rebuttal.

Q. Yes, the McIsaac rebuttal report --

A. March 14.

Q. Which is Exhibit 693, correct?

A. Correct.

Q. And then later on, during the course of the deposition, you identified when I showed you Exhibit 599, you said you had also seen that in preparation for your deposition?

A. OK, correct.

Q. Are there any other documents that you saw in preparation for your deposition?

WITNESS' ATTORNEY: Object to the extent that the documents shown to you by counsel did not refresh your recollection in any way.

You can answer with that instruction.

Q. Let's try this in stages, sir. You have identified three documents that you saw in preparation for your deposition so far?

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A. OK.

Q. Did you see more than three documents, sir? Just answer that yes or no?

A. No.

Q. No?

A. No.

Q. And turning to the rebuttal report, sir, Exhibit 693, can you show me where Mr. McIsaac references this September 17 calculation?

WITNESS' ATTORNEY: Objection to form.
A. Identified that there was a reserve calculation, paragraph 26.

Q. Is it your understanding, sir, that in order to determine whether or not there was a excess or deficit in the reserve, customer reserve account on September 17, 2008, the same rerunning exercise that you have testified to with respect to the September 19, 2008 date would also need to be undertaken?

WITNESS' ATTORNEY: Object to form.

A. It depends on the context of the -- or I should say it depends on the status of the books and records for that date.

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Q. Do you have any more information about the status of the books and records as of the 17th of September of 2008 than you do the books and records of LBI as of September 19, 2008?

WITNESS' ATTORNEY: Objection, form.

A. No, no.

MR. OXFORD: I don't have any further questions for you at this time, sir, but I believe your counsel does.

WITNESS' ATTORNEY: I do, but -- off the record.

(Recess)

EXAMINATION BY
MS. NEUHARDT:

Q. Mr. Oxford asked you a number of questions about your personal knowledge. Do you have personal knowledge of what goes into a 15c3-3 calculation?

A. Yes.

MR. OXFORD: Object to the form.

Q. You need to give him a chance to object now.

A. Sorry.

Q. And from where does that personal

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knowledge come?

A. From my 25 years of experience in the industry. I've worked at, as we went through my background, I have done the 15c3 calculation in some way, shape or form at several broker/dealers.

Q. Do you have personal knowledge of what databases LBI used in putting together its 15c3-3 calculations?

WITNESS' ATTORNEY: Object to form.

A. I know that information from my knowledge of having been at the exchange, I'm aware of the systems that Lehman used as well as discussions with my team who were legacy Lehman employees.

Q. Do you have personal knowledge of the general structure of the TSA?

MR. OXFORD: Object to the form.

A. Yeah.

Q. Can you tell me from where you get that -- first of all, when I say the general structure of the TSA, maybe you can elaborate on what your understanding of the TSA is.

A. The TSA was a group of employees that
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worked at the instruction and direction of the trustee. While they might be Barclays employees in name and they're paid by Barclays, they were not directed by Barclays Capital Inc., the broker/dealer which is what I work for. And that these employees are ring-fenced and I don't have access to them, and to the extent anybody on my team is required to work with them, that information is not to be shared.

Q. Are all TSA employees ring-fenced?

A. Not to my knowledge.

Q. OK, are there any employees of Barclays who at times work for the TSA and at times for work Barclays?

MR. OXFORD: Object to the form.

A. Yes, yes.

Q. OK, and now when employees work for the TSA, who whom do they report to?

A. My understanding is --

MR. OXFORD: Object to form.

A. My understanding is the trustee.

Q. Do they report to anybody at Barclays to your knowledge?

A. Not to my knowledge.

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Q. You said Barclays pays their salary. Do you know if Barclays gets reimbursed for their salary?

A. My understanding is they do.

Q. And from whom do they get reimbursed?

A. My understanding is from the trustee.

Q. Now, from where do you get these understandings of the TSA that we just discussed? We established that you said this is -- that's a terrible question so you can -- withdrawn.

What we have just discussed about the TSA is, are those answers based on personal knowledge?

MR. OXFORD: Objection, form.

A. Personal knowledge from my knowledge of the firm and my discussions with senior people as to what the TSA's intent was.

Q. OK, and Mr. Oxford asked you about whether or not there was a, in effect, a wall between people who had worked for the TSA and now worked for Barclays or who did part, part -- whether there was a wall which they could not discuss and I want you to answer it again

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because I believe your answer was unclear.

So is there a wall, when an employee works for both the TSA and for Barclays, either at different parts in time or they are part-time for both, is there a wall between their roles as TSA and Barclays employees?

A. Yes, that's my understanding and I confirmed that with Joel Potenciano who worked for me who has worked with TSA on several occasions and has told me himself that there is a wall there.

Q. And you said you confirmed that with Mr. Potenciano. Do you have personal knowledge otherwise of that wall?

A. Just as I said, similar to the TSA structure, is that those employees are not to be sharing information across the lines between the Barclays and the trustee.

Q. And this is from your role as the head of operations?

MR. OXFORD: Object to the form.

Q. What is the basis of your personal knowledge?

MR. OXFORD: Objection, form.

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A. From my position of a senior position in finance, run the regulatory reporting team for the broker/dealer and interact with senior management of the firm on a regular basis.

Q. In your declaration, did you purport to do a legal analysis of the TSA contract?

MR. OXFORD: Objection to form.

A. No.

Q. In your declaration, did you purport to do a legal analysis of the APA?

MR. OXFORD: Objection to form.

A. No.

Q. In your declaration, did you purport to do a legal analysis of the clarification letter?

MR. OXFORD: Objection to form.

A. No.

Q. Now, in your declaration and in your discussions with Mr. Oxford today, you have referred to who has access to the records of LBI. What do you mean by "access"?

MR. OXFORD: Objection, form, which records of LBI?

Q. Can you answer the question?

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A. Access to me means log on to the systems, ability to get the information from those systems.

Q. Does Barclays control who can log on to those systems?

MR. OXFORD: Objection, form.

A. No.

Q. Just to make the record clear, which systems are you referring to when you refer to those systems?

MR. OXFORD: Objection, form.

A. ITS, MTS and ADP 012.

Q. Do you know who does control the -- who can log on to MTS, ITS and ADP 012?

A. My understanding is the trustee or the people that work under his direction.

Q. OK, is that understanding based on your personal knowledge?

A. Personal knowledge --

MR. OXFORD: Objection, form.

A. My discussions with Joel Potenciano who has done work with the TSA and has told me that his system access has been revoked.

Q. Do you have access to MTS, ITS or ADP

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012?

A. No.

Q. Do you know of any Barclays employee who does have access?

A. No.

Q. Do you know whether the trustee has access to those systems?

MR. OXFORD: Objection, form, asked and answered.

A. My conversations with Alex Crepeau is affirmative.

Q. Right, and do you have personal knowledge of that as well?

A. Personal knowledge --

Q. Of what the trustee can access or that the trustee is able to access MTS, ITS and ADP 012?

A. I know from my work with Barclays Capital in the rate department, I know what we have access to and it is specific to certain records that we have acquired. So the logic is that the trustee has access to the rest because -- through that logic.

Q. And then you confirmed that

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understanding with other individuals, you said?

A. Yes, I spoke to Alex Crepeau and Joel as well.

Q. You have you been designated as an expert in this litigation?

A. No.

MR. OXFORD: Objection, form.

Can I hear that question back.

(Record read)

Q. And you're not a lawyer, correct?

A. Correct.

Q. Earlier today, you testified that you interpret Rule 15c3-3 in your position at Barclays. What did you mean by that?

A. I mean that I am responsible for doing customer reserve calculations and that I interpret my role in practical application of those calculations.

Q. Do you do any legal interpretation of the rules?

A. No, I'm not an attorney.

Q. Earlier today, you referred to, I believe, Mr. Burke as an expert in 15c3-3. What did you mean by that?

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A. I mean, I know he has extensive knowledge as well in the practical application of customer reserve calculations.

Q. Would you consider him to be a legal expert?

A. No.

Q. And you were asked various questions about Mr. McIsaac's reputation. Do you have any knowledge one way or the other about whether or not he is a legal expert in 15c3-3?

A. My understanding from Mr. McIsaac's background is he is a financial employee like myself and is not an attorney.

Q. Mr. Oxford asked you various questions about what you believed was or was not transferred over as part of the business of LBI and I believe he referred to paragraph 4 of the declaration, if you could find that.

A. OK.

Q. And I believe you testified that you knew that Barclays had acquired the wealth portion of LBI's business but you weren't sure as to other aspects of the business, is that correct?

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A. Correct.

Q. Do you know whether or not Barclays acquired all of the customers of LBI?

A. My understanding was no.

Q. Does Barclays have the ability to access records for customers that did not come over to LBI?

A. Barclays only has ability to access customer assets that are on its books. The assets that are on its books are housed solely in ADP 224.

Q. Does ADP 224 include customers who did not come over to Barclays?

A. No.

Q. For those customers who did come over to Barclays, does ADP 224 include the history of their accounts from prior to the acquisition?

A. No.

Q. Would you need -- for a reserve calculation to be rerun, -- actually, you know withdraw that.

Is there a difference between a reserve calculation and a reserve requirement?

A. It's the calculation -- the components

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to the requirement and the requirement is the net result.

Q. In order to do -- in order to determine what the reserve requirement should be, would you need to have information relating to -- should be as of September 19, 2008 for LBI, would you need to have information relating to customers that did not come to Barclays?

A. I am sorry, can you could repeat that for me.

Q. Yeah, that's terrible.

In order to determine what the reserve requirement for LBI should have been as of September 19, 2008, would you need to have access to information relating to customers that did not go to Barclays?

A. Yes.

Q. Why is that?

A. Because that would be the basis for the reserve component. It's going to be the entire population, books of assets and liabilities on the books of LBI, not just customer assets. Proprietary assets as well.

Q. You said not just customer assets,

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proprietary assets as well. What did you mean by "proprietary assets"?

A. Entire books and records. It means fails, financial transactions, inventory positions. All those of those are components to the reserve calculation.

Q. Is Barclays able to access any of that information for LBI prior to the acquisition?

MR. OXFORD: Objection, form.

A. No. Barclays can only access ADP 224.

Q. Would it also be -- would it also be necessary to have access to records relating to the customers that did go over to Barclays but for activity in their accounts prior to the acquisition in order to determine the reserve requirement as of September 19, 2008 for LBI?

A. Yes.

Q. And why is that?

A. Because as of September 19, 2008, LBI was the legal entity that held the assets and they belong to LBI, not to Barclays.

Q. OK, I guess I don't really understand how that affects -- how would the records for customer who came over, but for a date prior to

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<p>1 MARTINI</p> <p>2 the acquisition, be relevant to the calculation</p> <p>3 and then the ensuing requirement that would be</p> <p>4 calculated under the 15c3?</p> <p>5 A. I am sorry, if you can break that up</p> <p>6 for me.</p> <p>7 Q. OK, September 19 -- September -- well,</p> <p>8 the acquisition was September 22.</p> <p>9 A. OK.</p> <p>10 Q. How would pre-September 22, 2008</p> <p>11 information for customers that did, in fact, go</p> <p>12 over to Barclays be relevant to the reserve</p> <p>13 calculation and then the ensuing reserve</p> <p>14 requirement done for LBI on either September 17</p> <p>15 or September 19, 2008?</p> <p>16 MR. OXFORD: Objection, form.</p> <p>17 A. It being -- because those were the</p> <p>18 assets of that legal entity.</p> <p>19 Q. I think we are talking past each other</p> <p>20 a little bit. I'll come back to that.</p> <p>21 MR. OXFORD: I'm glad it is not just</p> <p>22 me.</p> <p>23 Q. Mr. Oxford showed you Exhibit 599. Do</p> <p>24 you still have that in front of you?</p> <p>25 A. Yes.</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 MARTINI</p> <p>2 Q. I believe you discussed who Bill Burke</p> <p>3 is. Do you consider him to be a Barclays</p> <p>4 employee?</p> <p>5 MR. OXFORD: Objection, form.</p> <p>6 A. No.</p> <p>7 Q. Why is that?</p> <p>8 A. Because he does not work for Barclays</p> <p>9 Capital Inc., the U.S. broker/dealer. He is an</p> <p>10 employee of TSA. My team does not have access</p> <p>11 to without the express permission of the</p> <p>12 trustee.</p> <p>13 Q. Dan Sudarsan, do you know if he has</p> <p>14 ever worked for the TSA?</p> <p>15 A. I don't know for certain, but I</p> <p>16 understand that many Lehman employees work for</p> <p>17 the TSA at some point but where those lines were</p> <p>18 drawn is confusing.</p> <p>19 Q. So at the time of this e-mail, you</p> <p>20 don't know whether or not Dan Sudarsan may have</p> <p>21 worked for the TSA?</p> <p>22 A. I don't know.</p> <p>23 Q. Do you know whether Mr. McLaughlin may</p> <p>24 have?</p> <p>25 A. I'm not certain.</p> <p>TSG Reporting - Worldwide 877-702-9580</p>
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<p>1 MARTINI</p> <p>2 Q. Do you know whether Mr. Buonocore may</p> <p>3 have?</p> <p>4 A. Actually, I'm not familiar with him</p> <p>5 personally.</p> <p>6 Q. Do you know whether Mr. Potenciano</p> <p>7 ever did?</p> <p>8 MR. OXFORD: Objection to form.</p> <p>9 A. I'm not sure.</p> <p>10 Q. In this e-mail, there is a discussion</p> <p>11 of a revised reserve formula. Are you able to</p> <p>12 determine from this e-mail who did the revised</p> <p>13 reserve formula?</p> <p>14 A. No.</p> <p>15 Q. So you have no idea whether it was</p> <p>16 done by Barclays or by TSA or by anyone else?</p> <p>17 A. Correct. I mean, our team would do it</p> <p>18 for Barclays and our team did not do the</p> <p>19 calculation.</p> <p>20 Q. And then there is a sentence about</p> <p>21 halfway down the first page by Mr. Sudarsan in</p> <p>22 his e-mail to Mr. McLaughlin. It says, "The net</p> <p>23 effect was that the reserve requirement was</p> <p>24 increased by 213 million."</p> <p>25 Now, you said there is a difference</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 MARTINI</p> <p>2 between reserve calculation and reserve</p> <p>3 requirement. Do you agree that whenever there</p> <p>4 is an adjustment to the reserve calculation,</p> <p>5 there necessarily is an adjustment to the</p> <p>6 reserve requirement?</p> <p>7 A. No, I think the reason for my past</p> <p>8 comments is that you have to look at the</p> <p>9 entirety of the reserve computation. So these</p> <p>10 net impacts would have affected individual lines</p> <p>11 of the calculation, but you have to look at the</p> <p>12 entire calculation.</p> <p>13 Based on my experiences, having done</p> <p>14 reserve calculations at many firms, there are</p> <p>15 cushions and additional credits inherent within</p> <p>16 the reserve computations. Those could come</p> <p>17 about from the result of just the fact that</p> <p>18 firms are usually unable to get through all of</p> <p>19 the data in the course of a reserve computation.</p> <p>20 So there could be logical positions that the</p> <p>21 firm just can't resolve so they take the credits</p> <p>22 in.</p> <p>23 Firms sometimes make management</p> <p>24 decisions based on particular reserve</p> <p>25 requirement -- determining how many operational</p> <p>TSG Reporting - Worldwide 877-702-9580</p>

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adjustments there were, how sloppy or clean that particular calculation was, that they may feel that they need to put additional credits in the reserve.

Q. So do you agree with Mr. Sudarsan's statement that the net effect of the adjustment to the calculation was that the reserve requirement increased by 213 million?

A. No, I don't believe that you can make an affirmative statement that that is the impact of the reserve requirement without doing a full analysis.

Q. OK. Now, Mr. Oxford asked you questions about access to various people. He referred to Mr. Potenciano. And I believe you testified that you're able to talk to Mr. Potenciano, is that correct?

A. Correct.

Q. Are you able to talk to Mr. Potenciano about work that you may have done for the TSA?

A. No.

Q. And why is that?

A. That information was privy between himself and the trustee or employee of the

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trustee.

Q. Is the same true for Mr. Sudarsan? Are you able to talk to Mr. Sudarsan about work that he may have done for the TSA?

A. It depends. I would not know specifically Mr. Sudarsan's relationship to the TSA. I know Joel Potenciano has worked under the express permission of the trustee, is in -- and in those particular cases, he has come to me. Mr. Sudarsan, I don't know. He has not come to me and I don't know.

Q. If he worked for the TSA, though, would you be able to discuss --

A. No, if he was working in a similar fashion as Mr. Potenciano, I would not be able to discuss this issue.

Q. Mr. Rodriguez, do you know if he worked for the TSA?

A. My understanding Mr. Rodriguez was a TSA employee.

Q. Would you be able to talk to Mr. Rodriguez about work that he did for the TSA?

A. No.

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Q. Now, even if you were able to talk to these individuals about LBI's 15c3-3 calculations, would Barclays be able to rerun LBI's reserve calculation as of September 19 or September 17, 2008 without access to MTS, ITS and I have forgotten the number of the ADP system, but that system that you identified earlier?

A. Can't do it without systems access, full populations data and interaction with the key regulatory people from LBI who know the underlying business and can interpret that data.

Q. I believe Mr. Oxford established that you're not familiar with SIPA, is that correct?

A. I'm not an attorney and I do not know how that rule works in practice.

Q. So you don't know whether or not Rule 15c3-3 would apply after a SIPA liquidation?

A. No.

Q. In the ordinary course of business, calculations are done once a week, correct?

A. Correct.

Q. If an event occurs after the calculation for one week, let's say -- when are

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they normally done?

Withdraw the prior question. What day of the week are the calculations normally done?

A. They are normally done on Mondays.

Q. And what date would that be as of?

A. As of Friday.

Q. And on what day -- then if there needs to be an adjustment to the account as a result of the calculation, when does that have to be done by?

A. Tuesday morning.

MR. OXFORD: Object to form.

A. Tuesday morning by 10 a.m.

Q. So if there is an event that occurs on a Wednesday, when -- that would result ultimately in a necessary adjustment to the reserve requirement, when would that adjustment need to be made --

MR. OXFORD: Object to form.

Q. -- in the ordinary course of business?

MR. OXFORD: Object to form, incomplete hypothetical.

A. That adjustment would roll to the next Friday's calculation.

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Q. And when would, if --

A. Or to the next calculation, I'm sorry.

Q. The next calculation would be on Monday?

A. As of Friday.

Q. And when would the money have to go into the account?

A. On the following Tuesday.

Q. So if there had been an event that occurred on a Wednesday and there had not yet been any sort of adjustment in the reserve account to account for that event, would the broker/dealer ordinarily be out of compliance with 15c3-3?

MR. OXFORD: Objection, form.

A. No.

Q. Mr. Oxford asked you a bunch of questions about why it would be necessary to do a complete recalculation. If there is an error -- withdraw that.

If there is an error in one line item of the reserve calculation, does that correlate to a necessary -- to a change in the reserve account?

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MR. OXFORD: Objection, form.

A. I'm sorry, I can't understand that.

Q. If it -- if there is a discrepancy that requires an adjustment to the reserve calculation in some form, does that necessarily require an adjustment to the reserve account?

MR. OXFORD: Objection.

A. You wouldn't know that unless you looked at, as I mentioned previously, the entire calculation that was performed so you would have to go back and scrub the rest of the data.

Q. So to know what actually had to be in a reserve account as of a particular day, you would have to do a complete recalculation?

A. You would need to have a complete reserve formula. So if I had any given formula day, if I have an adjustment after the fact, I would look to everything in that formula before I did anything to the reserve account.

Q. Mr. McIsaac asked you a number of questions about the state of LBI's books in the last week of -- the last week before it filed for SIPA protection.

MR. OXFORD: I know we are often
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confused because we look alike, but I am Mr. Oxford.

MS. NEUHARDT: What did I call you?

MR. OXFORD: Mr. McIsaac.

MS. NEUHARDT: Sorry. You don't look a thing like Mr. McIsaac.

Q. Mr. Oxford asked you a bunch of questions about the state of LBI's books prior to LBI's filing for SIPA protection. Even if -- you were not an employee of Lehman Brothers, right?

A. Correct.

Q. So you actually don't have personal knowledge of whether or not the books were in disarray prior to the SIPA proceeding, correct?

A. I don't.

Q. Is that relevant to your conclusion that Barclays cannot rerun the calculation of LBI's 15c3-3 calculation for September 19 or September 17, 2008?

A. No, the only reason that we can't run the calculation for those dates is access to the data and access to the people.

Q. So, if the books were in disarray,

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would you need access to any reconciliation of those books?

MR. OXFORD: Object to the form.

A. Yes, if there is a systematic problem of the data and there is a view that the data is materially inaccurate, then yes.

Q. But you couldn't rerun it regardless?

MR. OXFORD: Objection.

A. No, I couldn't rerun it.

Q. When you did your declaration, were you intending to respond to the entirety of Mr. McIsaac's report? I am sorry, declaration?

A. No.

Q. What portions of Mr. McIsaac's affidavit which I think you have in front of you as 693 were you intending to respond to?

A. Paragraphs 18, 29 through 33.

Q. So did you do any independent investigation of the other matters raised in Mr. McIsaac's rebuttal affidavit?

A. No.

MS. NEUHARDT: I may be done, just give me one minute.

No further questions.

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EXAMINATION BY

BY MR. OXFORD:

Q. Mr. Martini, I have a few follow-up questions.

I have -- this is a complete version of Exhibit 590. I have shown you previously, sir, just the affidavit of Mr. McIsaac. This is the one with the exhibits.

MS. NEUHARDT: Is this the original?

MR. OXFORD: This has the exhibits to it.

Q. This is the October 5 affidavit. Would you turn to tab 28 please, sir, Exhibit 28.

A. OK.

Q. Would you take a look at that document and tell me if you have seen it before, please.

A. I'm not sure if I have seen this document, but I was made aware of this issue at some point in 2009.

Q. This is the same issue that you testified to previously where there was a problem in the allocation of certain LBI securities that Mr. McLaughlin and Mr. Sudarsan
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discovered in 2008, correct?

WITNESS' ATTORNEY: Objection to form and mischaracterizes his prior testimony.

A. This document relates to the issue -- I am sorry, I apologize. If you could restate that, please.

Q. Let me try it a better way. This document relates to the issue, the adjustment that is the section of Exhibit 599A that's the January e-mail that I believe we spent some time looking at earlier.

MS. NEUHARDT: 599A or 599?

MR. OXFORD: 599.

A. This represents one of the issues in that document.

Q. You are not sure whether you have seen this document before?

A. I'm not sure if I have seen it. I know the issue, but I'm not sure whether in the past I have seen this document.

Q. You see it was memo written to Broadridge?

A. Correct.

Q. Who is that memo written by, sir?
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A. It says from Barclays Capital, Daniram Sudarsan and Kendall McLaughlin.

Q. Is that consistent with work that was done by employees at the direction of the TSA?

WITNESS' ATTORNEY: Objection to form.

A. I honestly don't know how this work was performed and by who.

Q. But on the face of the document, there is no indication, is there, that this work was done by anybody other than Barclays, correct?

WITNESS' ATTORNEY: Objection to form.

A. It says Barclays Capital. I can't imply from the context what that means.

Q. Sticking with Exhibit 599A --

WITNESS' ATTORNEY: There is no A.

MR. OXFORD: Sorry, 599.

Q. Ms. Neuhardt asked you with respect to 599 if you agreed with Mr. Sudarsan's statement that the net effect of the adjustment to the calculation was that the reserve requirement increased by 213 million. Do you remember that question?

A. I remember that question.

Q. Do you remember your answer is, "No, I
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don't believe I could make an affirmative statement that that is the impact of the reserve requirement without doing a full analysis." Do you remember that answer?

A. Yes.

Q. Is that your testimony, sir?

A. Yes.

Q. Do you know what analysis Mr. Sudarson did to reach his conclusion that the net effect was the reserve requirement increased by 213 million?

WITNESS' ATTORNEY: Objection to form.

A. I don't.

Q. Ms. Neuhardt also asked you a question about where there is a discrepancy that requires an adjustment to the reserve calculation in some form and whether that necessarily requires an adjustment to the reserve account. Do you remember her asking you that question?

A. Um-hm.

Q. And your answer is you wouldn't know that unless you looked at the entire calculation that was performed so you would have to go back and scrub the rest of the data.

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A. Um-hm.

Q. Is that your answer, sir?

A. That was my --

Q. Is that accurate?

A. Please rephrase that or repeat the question again.

Q. You said, "You wouldn't know that unless you looked at, as I mentioned previously, the entire calculation that was performed, so you would have to go back and scrub the rest of the data."

A. So my answer was that if there was adjustment to the reserve computation, that we would have to look at other aspects of the reserve computation.

Q. OK.

A. The reserve requirement.

Q. Is that consistent with your practice and the practice of your team at Barclays on a week-to-week basis, sir?

A. So, for example, I mean, if I did a reserve calculation on Monday for Friday and Wednesday I found that there was an error, would I go back and do a full calculation?

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I would go back to determine the materiality of the impact and make sure it was material and I look at other areas where I could have gotten benefit to make sure that I could have mitigated it.

Q. You wouldn't rerun the whole calculation would you, sir?

A. It would depend on the issue. If the issue was a systemic issue or it looked like problems with the integrity of the data, you would.

Q. And if there was no indication of a systemic issue, sir, in the adjustment, would you then rerun the whole calculation, sir?

WITNESS' ATTORNEY: Objection to form.

A. If it was an isolated case, I would look at the materiality of the adjustment and I would go back in my reserve formula, scrub the other numbers in there to look for other credits that I could find, and if it wasn't something that I believed to be an internal control issue with the data, I would not go back and do an entire new calculation.

MR. OXFORD: No more questions, sir.

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WITNESS' ATTORNEY: No further questions for me.

MR. DAKIS: Nothing from the committee.

MR. McMAHON: Nothing from the debtor.

ROBERT A. MARTINI

Subscribed and sworn to
before me this day
of _____, 2010.

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EXHIBITS

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Exhibit 828 Declaration	20

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MARTINI
CERTIFICATE
STATE OF NEW YORK)

)ss:

COUNTY OF NEW YORK)

I, MARY F. BOWMAN, a Registered
Professional Reporter, Certified Realtime
Reporter, and Notary Public within and for
the State of New York, do hereby certify:

That ROBERT A. MARTINI, the witness
whose deposition is hereinbefore set forth,
was duly sworn by me and that such
deposition is a true record of the testimony
given by such witness.

I further certify that I am not
related to any of the parties to this action
by blood or marriage and that I am in no way
interested in the outcome of this matter.

In witness whereof, I have hereunto
set my hand this 24th day of June, 2010.

MARY F. BOWMAN, RPR, CRR

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MARTINI
* * *ERRATA SHEET* * *
NAME OF CASE: In Re: Lehman Bros.
DATE OF DEPOSITION: 6/24/10
NAME OF WITNESS: RICHARD A. MARTINI

Reason codes:

1. To clarify the record.
2. To conform to the facts.
3. To correct transcription errors.

Page ____ Line ____ Reason ____
From ____ to ____

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RICHARD A. MARTINI

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